

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-56

PROCEDURAL HISTORY

On April 18, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the White River 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 Student's education.

On April 18, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 22, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On April 26, 2024, OSPI spoke with the District's director of special education.

On May 8, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension to May 15, 2024.

On May 13, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on May 14, 2024. OSPI invited the Parent to reply.

On May 23, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On May 29, 2024, OSPI requested that the Parent provide additional information, and the Parent provided the requested information the same day, which OSPI forwarded to the District.

On May 29, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on May 31, 2024. OSPI forwarded the information to the Parent on June 4, 2024.

On June 4, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on June 5, 2024. OSPI forwarded the information to the Parent on June 6, 2024.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 19, 2023. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Whether, since April 19, 2023, the District implemented the Student's individualized education program (IEP), including accommodations and calming strategies?
2. Whether, since April 19, 2023, the District addressed concerns related to behavior, including conducting an updated functional behavioral assessment (FBA) if warranted?
3. Whether, since April 19, 2023, the District followed special education discipline regulations?

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. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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 student'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).

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

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

Disciplinary Removal Generally: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. WAC 392-172A-05140. The procedural rules for the discipline of students who are eligible for special education are based on four general principles: (1) a student eligible for special education's placement should not be changed through discipline for behavior that is a result of his or her disability; (2) a student eligible for special education may be disciplined for behavior that is not a result of his or her disability, but only in a manner that is consistent with the discipline imposed on nondisabled students without disabilities; (3) during a

period of discipline, a student eligible for special education should continue to receive services that will allow him or her to progress in his or her education; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05175.

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 eligible for special education has been removed from his or her current placement for ten school days in the same school year, and the removal is a change of placement, during any subsequent days of removal the student must continue to receive educational services, that provide a 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. The student's IEP team determines appropriate services. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(3).

After a student eligible for special education has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement, during any subsequent days of removals, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, 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. The services may be provided in an interim alternative educational setting. WAC 392-172A-05145(4).

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the student; or, if a BIP already has been developed, review the BIP, and

modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. 34 CFR §300.530(f); WAC 392-172A-05147.

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05148.

FINDINGS OF FACT

Background: 2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of emotional behavioral disability and was in the sixth grade in the District.
2. On November 22, 2022, the Student's team met and developed his annual IEP. The IEP indicated the Student had behaviors that impacted his learning, noting the Student "has big reactions to emotions and feelings of frustration, sadness and anger. These reactions can be disruptive to the learning environment and sometimes become unsafe for [Student] and his peers." The IEP listed interventions in place, including feedback, specially designed instruction, a behavior contract, accommodations, a functional behavioral assessment (FBA), a behavioral intervention plan (BIP), and an emergency response protocol (ERP).

The IEP included annual goals in social skills (feedback/self-reflection), behavior (verbal aggression, follow adult directions), math, written language, and communication/social skills (self-expression), with progress reporting at the semester. The IEP provided accommodations, including, in part, frequent breaks/opportunity for movement, individualized reinforcement, and noise buffers. The Student's IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Behavior: 145 minutes a day (to be provided by a special education teacher and/or paraeducator)
- Social Skills: 145 minutes a day (to be provided by a special education teacher and/or paraeducator)
- Math: 30 minutes a week (to be provided by a special education teacher or other certificated staff)
- Written Language: 20 minutes a week (to be provided by a special and/or paraeducator)

The IEP indicated the Student would spend 15.01% of his time in the general education setting, accessing the majority of his instruction in a self-contained behavior program.

3. The BIP, based on an FBA conducted in November 2022, included the target behavior of “verbal and physical aggression”. The BIP described contributing facts and antecedents, intervention strategies, replacement behaviors, a response plan, a de-escalation plan, and other strategies. The BIP included some calming strategies, such as staff modeling deep breaths, working to verbalize feelings, and use of a calm tone.
4. The ERP, signed by the Parent, indicated that isolation and restraint may be considered if the Student was “hitting, punching or lunging at students and running out of the classroom, climbing windows or counter tops, kicking staff or students...”
5. On March 2, 2023, the Student’s IEP team met, although the IEP indicated the Parent did not join the meeting and agreed to the plan to “reduce minutes in special education setting and add minutes to general education setting.” The Student’s IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - Behavior: 30 minutes a day (to be provided by a special education teacher and/or paraeducator)
 - Social Skills: 30 minutes a day (to be provided by a special education teacher and/or paraeducator)
 - Math: 30 minutes a week (to be provided by a special education teacher or other certificated staff)
 - Written Language: 20 minutes a week (to be provided by a special and/or paraeducator)

The IEP indicated the Student would spend 80.2% of his time in the general education setting, although the IEP continued to state that the Student would be placed in a self-contained behavior program.

The prior written notice stated that the Student’s “behavior goal data indicates that he is consistently meeting safe, responsible and respectful classroom expectations.” And “the team feels like [Student] has earned the opportunity to prove he can be successful with more time outside of the [self-contained behavior] setting.”

Complaint Investigation Timeline Began April 19, 2023

6. On April 19, 2023, a manifestation determination meeting was held to address discipline that occurred related to incidents of “physical aggression” on March 23, 27, 30, and April 11, 2023. The manifestation review found that the Student’s behavior had a “direct and substantial relationship” to his disability, although was not a result of a failure to implement the IEP. The documentation indicated the team planned to have a designated lunch and recreation spot for the Student, create a structured agenda for lunch and recreation, and have staff check in with the Student regularly.
7. The documentation in the complaint indicated the Student received support from a WISE team.¹

¹ WISE, or “Wraparound with Intensive Services”, is an approach to helping children, youth, and their families with intensive mental health care. Services are available in home and community settings and offer a system

8. On May 9, 2023, a manifestation determination meeting was held and the Student's conduct was found to be a manifestation of his disability. The documentation indicated that in response to the incident, the Student was also restrained and isolated.
9. The Parent stated that the Student was removed at the end of the school year and that "there was no concern or regard to his social and emotional learning with interaction with same age peers." The Parent stated that she requested an alternative placement for the Student but was denied.
10. Email documentation indicated the Student was receiving some instruction via remote learning in May 2023.
11. The District's last day of school was June 15, 2023.

2023–24 School Year

12. At the start of the 2023–24 school year, the Student continued to be eligible for special education services, was in the seventh grade, and attended a District middle school. The Student's November 2022 IEP, amended in March 2023, was in effect.
13. The District's 2023–24 school year began on August 31, 2024.
14. On October 2, 2023, the Student was suspended for one day after a verbal altercation with a peer and the Student hit the peer in the head.
15. On October 17, 2023, a behavior incident occurred during which the Student was physically aggressive toward staff, including spitting, kicking, and hitting. The Student also destroyed school property.

An isolation and restraint form indicated that during the incident, the Student was isolated for 30 minutes after behaviors, such as hitting, kicking, and spitting on staff. The form indicated that staff attempted to check in with the Student, offered breaks, and offered reminders prior to the isolation.

16. On October 23, 2023, a manifestation determination was held, and the conduct was found to be a manifestation of the Student's disability. At the meeting, the Parent shared that the Student felt,
overwhelmed in his regular classes - feels like he's falling behind...[Student] has the most worry about his Math Class. He's also shared there are kids in that class that have called him names...this school year [Student] has become very aware of letter grades and often shares that he needs to be earning at least Bs in all his classes.

of care based on the individualized need of the child or youth. <https://www.hca.wa.gov/free-or-low-cost-health-care/i-need-behavioral-health-support/wraparound-intensive-services-wise>. Here, the Student's providers through the WISE team would, schedule permitting, come to school and assist with behavioral incidents, and provide behavior and de-escalation support.

The manifestation determination documentation included that data was kept on the Student's behaviors and that his strengths were completing tasks, "keeping body or things to self", and staying in assigned areas. The Student struggled with following directions and using appropriate language. Regarding math, the documentation indicated that when the Student expressed "worry...frustrations with them about Math, he's always offered the opportunity to complete that's [sic] days assignments in the [behavior] classroom." And the document included an action plan, summarized as follows:

- Team was in process of updating the Student's BIP and would incorporate information from this action plan.
- Team would complete "an informal Sensory Checklist to help Team members have a better idea about whether some of [Student's] aggressive behaviors stem from sensory overload."
- Math teacher will "directly assign what parts of each lesson [Student] must do rather than have [behavior classroom] staff deliver that information."
- Continue to provide opportunities for physical activity breaks.
- The Parent and Student will review weekly progress report together.
- "Continue to help [Student] monitor how he's doing on his daily [behavior program] goals."

17. An email following the manifestation determination meeting indicated that, in general, the Student had made "significant progress since he began receiving IEP services" and that the Student had, had "fewer incidents during the beginning of this school year than in previous years."

18. On November 15, 2023, the Student's IEP team met and developed his annual IEP. The IEP continued to indicate the Student had behaviors that impacted his learning, noting the same challenges and strategies as the November 2022 IEP.

The IEP included annual goals in social skills (self-management², social awareness), behavior (self-expression, verbal aggression), math, and written language, with progress reporting at the semester. The IEP provided accommodations, including, in part, frequent breaks/opportunity for movement, individualized reinforcement, and noise buffers. The Student's IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Behavior: 85 minutes a day (to be provided by a special education teacher and/or paraeducator)
- Social Skills: 85 minutes a day (to be provided by a special education teacher and/or paraeducator)
- Math: 60 minutes a week (to be provided by a special education teacher or other certificated staff)
- Written Language: 20 minutes a week (to be provided by a special and/or paraeducator)

The IEP indicated the Student would spend 47.3% of his time in the general education setting.

The prior written notice documenting the meeting indicated the team discussed that the Student had been feeling overwhelmed at school and that "pressure from academics in the

² The Student's social management goal included the Student increasing skills in identifying and using appropriate break/calming strategies.

general educations setting and difficulty fitting in socially have led to some escalating behaviors." The Parent shared she was considering withdrawing the Student and enrolling him in an online program. The notice indicated the team planned to meet in a few weeks to review how the Student was doing.

19. The November 2023 BIP included updated behavior data and indicated the target behavior continued to be verbal and physical aggression. The BIP included the following information:
[Parent] reports that he will be connected with a psychiatrist to be prescribed a new medication for his emotional outbursts. [Student] recently experienced a death in the family with a family member he was close to which caused an escalation in his behavior as far as the duration and the frequency of occurrences. [Student] experiences frequent conflict with peers during unsupervised time and often lashes out at peers that he perceives to be annoying. He has a diagnosis of ODD and PDD which can affect his compliance with reasonable instructions, impulsivity, and sensory input. He also experiences changes when tired or when not taking his medication consistently.
20. Emails following the November 2023 IEP meeting indicated there was a concern about the Student being overwhelmed on the regular bus and that the District was updating the IEP to include special transportation.
21. On December 1, 2023, an incident occurred during which the Student was restrained and isolated. The District's report included information about de-escalation strategies used during the incident and positive behavior supports attempted, such as relaxation techniques, and strategies such as check-ins, prompting to use self-regulation strategies, and redirection used prior to the restraint and isolation. The isolation, per the report form, lasted approximately 45 minutes.
22. In additional information, the District provided more information about the incident, noting that the Student was escalated prior to lunch, and when the lunch bell rang, the Student attempted to leave the room. The staff in the room with the Student "encouraged him to try some strategies to regulate so he could go to lunch" and the Student continued to escalate while staff continued to encourage "some relaxation techniques." The District stated that the Student has a history of behavior where when he was escalated, he often became physically aggressive and unsafe. The District stated that the Student was "escalated throughout the isolation as evidenced by his volume and tone of voice. Lunches are already overstimulating and overwhelming at times. Staff did not feel that sending [Student] to lunch while he was escalated was a safe idea."
23. On December 6, 2023, there was an incident during which the Student "assault[ed] multiple staff members" and failed to "comply with reasonable requests." The Student was issued an emergency removal for 9.5 days, which was converted to a nine day out of school suspension (December 7, 2023 through January 3, 2024).

During the behavior incident, restraint and isolation were also used. According to the documentation, the restraint lasted one minute and the isolation lasted 100 minutes. Preceding the restraint and isolation, the Student was escalated, prompts and redirects were

provided, and the Student was asked if he wanted to go outside or call the Parent (“both strategies for when he is escalated”). Ultimately, he hit and kicked staff, tried to pick up a chair, pushed and spit at staff.

24. Regarding the incident on December 6, 2023, the District provided more information and shared de-escalation strategies attempted, including asking if the Student wanted to call his Parent. The Student ultimately called the Parent, but the call dropped, causing the Student to escalate further. The staff attempted to put up a “temporary wall,” and ultimately, the Parent arrived at school. The District stated:

This isolation lasted so long because [Student] was refusing to leave when his mom arrived to take him home. [Local police department (PD)] was on campus and [Student’s] mom asked if we could get them to assist. He was non-compliant continuing to refuse leaving. It wasn’t so much that he was in isolation that whole time as much as the incident lasted that long until [local] PD escorted him out of the building.

25. The District was on break December 18, 2023 through January 1, 2024.

26. On January 5, 2024, a reentry meeting was held following the suspension issued in December 2023. The meeting was attended by the Parent, District social worker, assistant principal, IEP case manager/special education teacher, and the WISE team.

According to the District, during the discussion with the Parent at this meeting, the Parent “requested to have [Student] resume classes at home so he wouldn’t hurt anyone at school” and staff advocated to have the Student at school, receiving in-person instruction for social emotional learning.

27. A January 5, 2024 prior written notice indicated the District and Parent discussed the “need for a shortened school day (1 class period in person at [middle school] for [specially designed instruction] and 4 classes online at home)” due to “an increase in physical escalations per parent request.” The notice indicated that the Student’s new schedule would start on January 8, 2024.

28. Documentation, including emails, in the District’s response indicated the Student accessed online learning through “edgenuity” and received support from a specialized paraeducator. The paraeducator emailed the Student and Parent in January and February to provide prompts, encouragement, address questions, facilitate assignment retakes in the online learning, check in about work completion and grades.

29. On February 2, 2024, the District reported the Student’s progress on his goals, which indicated the Student was either making insufficient progress or at the emerging skill level on all goals.

The District response included data tracking sheets on the Student’s various behavior goals.

30. A February 28, 2024 prior written notice indicated the team met to discuss the Student returning to the middle school for social emotional learning instruction and practice, and continuing other classes online. The notice documented that “[Student] and his family don’t

feel like he can return to school because of his feelings toward [self-contained behavior program] staff members” and that the Student was “worried that he will interact negatively and demonstrate unsafe behavior.” The notice indicated the team discussed that it did not feel like online social emotional learning would be effective for the Student as it does not provide opportunities to practice skills being taught with peers.

31. On February 28, 2024, according to a prior written notice, the Student was withdrawn from the District middle school.
32. A March 18, 2024 email indicated the Student had been withdrawn from the District as of March 18, 2024. The Student was enrolled in an online program run by another Washington school district.
33. On April 18, 2024, OSPI received and opened this complaint investigation. In her complaint, the Parent alleged that the District failed to:
 - Implement the calming strategies and accommodations in the Student’s IEP.
 - Conduct an updated FBA.
 - Sent the Student home early by calling the Parent on a “frequent weekly basis for soft suspension pick ups as well as multiple day suspensions.”
34. On April 22, 2024, the District special education director and Parent had a phone call. According to the call notes, the Parent stated the Student was doing well in the online school and that they planned to stay in the online school this school year as the family might be moving. The notes indicated that the Parent stated if they stayed in the District next year, she would reach out so the team could discuss placement.
35. In its response, the District’s provided documentation of instruction and classroom lessons provided throughout the school year by the District social worker on social emotional learning. The social worker also provided the Student with 1:1 and team support on October 26 and 30, 2023.

The individual support included addressing safety concerns related to an incident where the Student wrote statements about self-harm, supporting de-escalation strategies, and emotional processing. Team support included addressing the Student’s thoughts of suicide and “escalations that occur when trying to safety plan with him,” planning for line-of-sight support, reviewing the “conflict cycle” to use with the Student during check ins, and collaboration with the WISe team and Parent.

36. The District response also included documentation of the supports and instruction provided in the self-contained behavior program/classroom. This included information about:
 - Social thinking methodology and zones of regulation framework and curriculum used in the class and examples of social thinking and zones of regulation lessons.
 - End of period checkouts to reflect on behavior.
 - Data checks with the Student (and students generally).
 - A phase/level or classroom privilege/reward system and token economy system.
 - A break pass system and expectations.

37. In additional information, the District provided more information about the behavior strategies and supports used, including the following in summary:

- Staff introduced the breathing techniques and practiced them, such as “belly breaths” (hold bellies and feel them expand while taking deep breaths). Students get a “Lazy 8” and a “6 sides of breathing” visual to practice the techniques.
- “Sometimes we do some jumping jacks or something to get our heart rates up and check our pulse, practice some breathing techniques and then check our pulse after to show how breathing can help. We connect it to getting triggered and our heart starts beating faster.”
- For breaks, there are designated areas that are quiet, such as offices outside the classroom, on the other side of the room when the divider wall is pulled out, or outside to remove triggers.
- Other break strategies can include going for a walk or calling home.
- “We discuss with students what triggers them and learning to identify early warning signs, such as things like heart beating faster, clammy hands or skin, becoming fidgety, etc. The mindfulness that we practice in other lessons/activities can help with being mindful of these early warning signs to take our breaks or breathe before becoming too escalated.”

38. In reply to the District’s response, the Parent stated:

I, along with [Student’s] WISE team, are in agreeance [sic] that the school did not uphold or follow the IEP or behavioral plan at all. This is proven in the times that he has been removed from in person learning, not only with his academic marks, but also his behavior. He is getting all A's and B's and has had no physical escalations. We feel that the school failed to accommodate his needs as well as denying him the opportunity to utilize his calming strategies on a repeated basis.

In additional information, the Parent stated that the following calming strategies were not consistently provided:

- Breaks Outside: “One of [Student’s] strategies was to go outside for fresh air to calm himself. I was witness to several times where he was told no he needed to calm himself first, which negates the calm down strategy itself.”
- Deep Breathing: “he was told occasionally that his breathing was not good enough, which is a trigger for [Student]. Deep breathing is deep breathing in whatever way is suitable for the child.”

The Parent also stated that during manifestation determination meetings, they discussed additional strategies that were “never implemented for more than a day or two, if at all.” The Parent raised additional concerns about restraints used on the Student.

The Parent further raised concerns about the Student’s access to the general education setting, stating if the Student “seemed slightly down that day...he would be denied entry to his general education classes, when there was no real reason to do so, causing him to get upset, usually resulting in being sent home or suspended almost weekly.” The Parent reiterated concerns about bullying and stated the Student “would end up being sent home or suspended and even having to change his bus route.” Regarding the bus, the Parent stated, “This was a devastation to us both, as [Student] worked extremely hard to earn the opportunity to go back on the regular busses, instead of the special education busses.”

39. Regarding the Parents concerns about general education and the bus, the District shared:

- The “[Student] had access to the general education curriculum. He attended general education ELA, math, band and history classes. [Student] expressed frustration about being overwhelmed with the grades and work completion. He requested to remain in the [self-contained behavior program] classroom and missed several days of instruction. The [behavior program] classroom staff assisted [Student] with completing core instruction assignments (writing, math, history) while in their class.”
- The “[Student] had access to regular bus transportation. He was on a regular bus until November. The regular bus was becoming too overwhelming and had continued negative interactions with peers. [Student] and his mom asked for him to return to special transportation. This was documented in IEP Online and shared with transportation staff.”

Regarding the Parent’s allegations related to the Student being sent home early, the District stated after reviewing data, the Student was consistently in sixth period, indicating he was not regularly leaving school early. There were a few exceptions, including days missed “from suspension, absences and a couple missed periods.” The District also noted that a support for the Student “in his escalation cycle” is to call home and talk to the Parent to help with regulation. The District stated the Parent,

Would often offer to pick [Student] up when he wanted her to get him. Mom would also offer to pick him up if she felt he might become unsafe physically. On occasion, as it got close to 2:30, if [Student] was unable to de-escalate, we would call mom to pick him so that we wouldn’t put him on the bus escalated and potentially create an unsafe situation.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the District failed to provide the calming strategies and accommodations in the Student’s IEP.

A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 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 student’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.

The Student’s IEPs included specially designed instruction in behavior and social skills and goals in those areas that addressed feedback/self-reflection, verbal aggression, follow adult directions, self-expression, self-management³, and social awareness. In addition, the Student’s IEP and BIP included accommodations, strategies, and supports, such as frequent breaks/opportunity for movement, individualized reinforcement, and noise buffers, staff modeling deep breaths, working to verbalize feelings, and use of a calm tone.

The Parent stated that she believed accommodations and calming strategies were not provided because she witnessed times when the Student was told to “calm himself first [before going

³ The Student’s social management goal included the Student increasing skills in identifying and using appropriate break/calming strategies.

outside for a break], which negates the calm down strategy itself” or that at times, the Student was told “breathing was not good enough, which is a trigger for [Student].” The Parent also stated that the fact that the Student had behavior incidents was evidence the IEP and BIP were not implemented and that because the Student was doing well now in an online school run by a different district, that shows the District was not implementing the Student’s IEP or BIP.

District documentation, including behavior reports, documented staff prompting the Student to use self-regulation strategies and providing redirection, among other strategies. The District also provided documentation of instruction, classroom lessons, and 1:1 work with the Student and Student’s team provided throughout the school year by the District social worker on social emotional learning. The individual support included addressing safety concerns related to an incident where the Student wrote statements about self-harm, supporting de-escalation strategies, and emotional processing. Team support included addressing the “escalations that occur when trying to safety plan with him,” planning for line-of-sight support, reviewing the “conflict cycle” to use with the Student during check ins, and collaboration with the WISE team and Parent. The District provided detail about strategies, such as breathing techniques, breathing technique visuals, and breaks.

The data on the Student’s progress was mixed. The February 2024 progress report indicated the Student was making insufficient progress or was at the emerging skill level on all goals. However, other documentation showed that at other times, the Student was making progress. For example, in March 2023, the Student’s IEP team increased his time in general education as he made progress and “behavior goal data indicates that he is consistently meeting safe, responsible and respectful classroom expectations.” Further, even though behavioral incidents occurred in October 2023, the District noted the Student had fewer incidents at the start of the school year than previous years. Other documentation indicated that other factors, such as a recent death in the family and the Student changing medications, was impacting the Student’s behavior.

Thus, while the Student by February 2024 was making little progress on IEP goals, this does not necessarily indicate the accommodations in the IEP and strategies in the BIP were not implemented. First, even if an IEP and BIP are materially implemented, a student may have behavioral incidents—especially a student who, like the Student, is eligible under the emotional behavioral disability category and whose IEP documents the Student’s behavioral challenges. Second, documentation supports that the Student at least at the start of the school year was having fewer behavior incidents and then as the year progressed, that factors outside of school were impacting the Student’s behavior. Third, as many of the Student’s behaviors related to conflict with peers and escalation during unstructured and overstimulating times, it makes sense that the Student would be exhibiting fewer of those behaviors in an online school setting where the access to peers is different and potential overstimulation may be decreased.

OSPI finds that while there may have been instances when the IEP or BIP was not implemented perfectly, as witnessed by the Parent, overall, the District materially implemented the Student’s IEP. While there may have been occasions when behavior strategies and supports were implemented imperfectly, or when one behavior strategy was offered rather than another—e.g., prompting a break or a redirection, instead of doing a breathing technique—these appear to be

rare occurrences and do not reflect a regular failure to implement the IEP. Instead, District documentation supports diligent work to provide behavior and social emotional instruction and respond to the Student's ongoing behavior needs. OSPI finds no violation.

Issue Two: Behavior Concerns – The Parent alleged the District failed to respond to the Student's behavior needs, including not conducting an updated FBA.

When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. If an IEP team determines that they would be appropriate for a child, an FBA and BIP must be used proactively.

The Student's IEP indicated the Student had behaviors impacting his learning, noting the Student "has big reactions to emotions and feelings of frustration, sadness and anger. These reactions can be disruptive to the learning environment and sometimes become unsafe for [Student] and his peers." The investigation showed that the District did numerous things to address the Student's behavior needs, including:

- The IEP listed interventions in place, including feedback, specially designed instruction, a behavior contract, accommodations.
- The Student had a BIP, based on an FBA conducted in November 2022, that included the target behavior of "verbal and physical aggression". The BIP was also updated in November 2023. The BIP described contributing facts and antecedents, intervention strategies, replacement behaviors, a response plan, a de-escalation plan, and other strategies.
- The Student also received support from a WISE team.
- The District tracked the Student's behavior and his progress and adjusted the Student's IEP as needed. For example, in March 2023, increasing the amount of time the Student spent in general education, and in November 2023, switched the Student's transportation to special education transportation after the IEP discussed concern over the Student feeling overwhelmed on the regular bus.⁴

⁴ The Parent raised concern in additional information about the bus, stating the Student not being able to ride the general education bus was a punishment. The District stated, "[Student] had access to regular bus transportation. He was on a regular bus until November. The regular bus was becoming too overwhelming and had continued negative interactions with peers. [Student] and his mom asked for him to return to special transportation. This was documented in IEP Online and shared with transportation staff." The Parent also raised concerns that the Student's access to the general education setting was limited; however, the District noted that the Student attended a general education English language arts class, math, band, and history. The District also stated the Student at times "expressed frustration about being overwhelmed with the grades and work completion. He requested to remain in the [self-contained behavior program] classroom and missed several days of instruction. The [behavior program] classroom staff assisted [Student] with completing core instruction assignments (writing, math, history) while in their class."

- Documentation from behavior incidents described a number of different de-escalation and positive behavior strategies and supports the District provided or attempted to provide, including offering breaks.

While it is true the Student was issued formal discipline and had a few incidents of restraint and isolation, these incidents do not mean that the District was not addressing or responding to concerns about the Student's behavior. As discussed above, the Student's IEP and BIP were being materially implemented and the Student was receiving supports and services addressing behavior, either in the self-contained behavior class or by the staff in that classroom.

Even if an IEP and BIP are materially implemented, a student may still have behavioral incidents. And here, that was true, the Student's behaviors were not eliminated completely even as the team worked with the Student on behavior interventions, de-escalation strategies, and social emotional instruction. The Student's team, including the Parent, met several times and discussed the Student's needs, behaviors, and strategies and supports. While the team may not have implemented every behavior support discussed in meetings—e.g., the Parent stated that follow up items from a manifestation determination were not implemented for more than a day or two; although OSPI notes, the manifestation discussion seems to be strategies to attempt and the Student's IEP was not necessarily amended to include new strategies requiring ongoing implementation, although as discussed at the manifestation determination, the Student's BIP was updated and the team continued to track and monitor behavior data—the District was responsive to many of the Parent's requests. For example, the Parent, throughout the year, indicated she was considering online school and prior to fully withdrawing the Student in February 2024, the District did provide instruction in a hybrid format: some instruction provided online with the Student receiving support from a paraeducator (the paraeducator emailed the Student and Parent in January and February to provide prompts, encouragement, address questions, facilitate assignment retakes in the online learning, check in about work completion and grades).

Overall, while OSPI understands the Parent's concern that the Student continued to be disciplined for behaviors, OSPI finds that the District did take a variety of steps to address the Student's behaviors, including providing strategies and supports, developing and amending IEPs and BIPs, holding meetings with the Parent and getting Parent input, and continuing to adjust supports to the Student's needs. OSPI finds no violation.

Restraint & Isolation: OSPI does note a concern regarding the reported isolations, in that the isolations are reported as having occurred for a significant duration, from 30 minutes in one incident to 100 minutes in another. OSPI reminds the District that isolation may only be used when there is an imminent likelihood of serious harm, and the isolation must be ended as soon as the harm dissipates. It is important to note that the imminent likelihood of serious harm dissipating is not always the same as a student being fully calm or fully deescalated.

However, based on information from the District, OSPI notes that the concern seems to be with how the District is reporting isolation. For example, in additional information about one of the isolation incidents, the District described what seemed to be staff remaining with the Student and attempting different de-escalation strategies and relaxation techniques, and not that the Student

was isolated per the definition of isolation—"Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include...temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan"—for the full amount of time listed on the report form. In other words, the Student was not actually alone or isolated for the time listed on the form. And, in additional information about another incident, the District stated that "It wasn't so much that he was in isolation that whole time as much as the incident lasted that long."

Given this, does not find a violation related to the *use* of restraint or isolation. However, OSPI strongly recommends the District review restraint and isolation regulations, including what constitutes isolation and reviews reporting practices in the District.

Issue Three: Discipline Regulations – The Parent alleged the District did not follow proper special education discipline procedures, including that it sent the Student home early by calling the Parent on a "frequent weekly basis for soft suspension pick ups."

Formal Discipline: A change in placement occurs when a student is removed from his 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. Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or BIP.

During the 2022–23 school year, the Student was disciplinarily removed several times and the District held manifestation determination meetings on April 19 and May 9, 2023, both times finding that the conduct in question was found to be a manifestation of the Student's disability. Following the April 19, 2023 manifestation determination, the documentation indicated the team planned to have a designated lunch and recreation spot for the Student, create a structured agenda for lunch and recreation, and have staff check in with the Student regularly.

During the 2023–24 school year, the Student was suspended on October 2 and 17, 2023. A manifestation determination was held on October 23, 2023, and the conduct in question was found to be a manifestation of the Student's disability. During the manifestation determination, the Parent shared the Student's struggles in math class. The manifestation determination documentation included that data was kept on the Student's behaviors and that his strengths were completing tasks, "keeping body or things to self", and staying in assigned areas. The Student struggled with following directions and using appropriate language. Regarding math, the documentation indicated that when the Student expressed "worry...frustrations with them about Math, he's always offered the opportunity to complete that's [sic] days assignments in the [behavior] classroom." And the document included an action plan, with several next steps.

An email following the manifestation determination meeting indicated that, in general, the Student had made “significant progress since he began receiving IEP services” and that the Student had, had “fewer incidents during the beginning of this school year than in previous years.”

On December 6, 2023, the Student had another behavior incident and was issued an emergency 9.5-day removal, later converted to a nine-day suspension. Following this, the District had what it called a “reentry meeting”, which was attended by the Parent, District social worker, assistant principal, IEP case manager/special education teacher, and the WISe team. This meeting was functionally a manifestation determination, and the team discussed the Student’s placement moving forward. The Parent requested to have the Student “resume classes at home so he wouldn’t hurt anyone at school” and staff advocated to have the Student at school, receiving in-person instruction for social emotional learning. A prior written notice documented that the team ultimately agreed to “a shortened school day (1 class period in person at [middle school] for [specially designed instruction] and 4 classes online at home)” due to “an increase in physical escalations per parent request.” The hybrid schedule was implemented until late February 2024, when the Parent withdrew the Student from the District and enrolled him in an online school.

Overall, OSPI finds that the District followed special education discipline procedures: when the District disciplinary removed the Student, it determined whether a disciplinary change in placement occurred, appropriately held manifestation determination meetings, and following team discussion and decision making, provided the Student a hybrid schedule with some instruction provided online and some in-person. OSPI finds no violation.

Informal Discipline: The Parent also alleged that she was frequently called to pick the Student up early and that these pick-ups were not recorded as formal disciplinary removals. The District provided information that it reviewed the Student’s attendance data, and that aside from disciplinary removals and a few excused absences, the Student was consistently marked present for sixth period, indicating he was not regularly leaving school early. The District noted that a support for the Student “in his escalation cycle” is to call the Parent to help with regulation. The District stated the Parent,

would often offer to pick [Student] up when he wanted her to get him. Mom would also offer to pick him up if she felt he might become unsafe physically. On occasion, as it got close to 2:30, if [Student] was unable to de-escalate, we would call mom to pick him so that we wouldn’t put him on the bus escalated and potentially create an unsafe situation.

One example of this is the incident on December 6, 2023, where the Student called the Parent as part of his de-escalation strategies. It is not clear whether District staff asked the Parent to come to school or not, but on arrival, according to the District, the Parent asked if the local police department, who had an officer on campus, could assist with escorting the Student out of the building.

OSPI finds that there is no indication that the Student was regularly sent home early. It appears that calling the Parent was part of the Student’s de-escalation strategies and that often, the Parent would end up picking the Student up. While calling a parent can be an appropriate strategy, OSPI

reminds the District to be mindful of a couple of points: first, districts should carefully consider whether there is an overreliance on a parent to help deescalate a student instead of reliance on district staff; second, it is important to not inadvertently create a situation where a parent feels like they have to pick a student up early due to the student's behaviors, as this may be considered a disciplinary removal if occurring regularly. Here, if the Student were to reenroll in the District, OSPI recommends the District determine whether an updated FBA is needed, and that the Student's IEP team review his BIP. Overall, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI notes that while it did not find a violation related to the *use* of restraint or isolation, it does appear the District may be overreporting isolations. Thus, OSPI strongly recommends the District review restraint and isolation regulations. The District should review what constitutes isolation and review reporting practices in the District. OSPI recommends the District consider whether staff need training related to restraint and isolation documentation and reporting.

Dated this 11th day of June, 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.)