

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-60

PROCEDURAL HISTORY

On April 19, 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 East Valley 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 19, 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 by May 9, 2024.

On May 9, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply by May 22, 2024. The Parent did not reply.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 20, 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 the District implemented the Student's individualized education program (IEP) during the 2023–24 school year?
2. Whether, during the 2023–24 school year, the District followed special education discipline regulations, including conducting a sufficient manifestation determination and providing services during exclusions, per WACs 392-172A-05140 through 392-172A-05155?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an 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). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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.

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-05145(3)-(4).

Disciplinary Removal that Results in a Change of Educational Placement: Students eligible for special education may not be improperly excluded from school for disciplinary reasons. 34 CFR §300.530; 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 should not be disciplined 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; (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 after 10 days of removal; and (4) when a student's disciplinary removal from school is significant enough to amount to a change in their educational placement, additional procedural requirements apply. *See generally* WAC 392-172A-05140 through 05155.

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 (1)-(4).

A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning. WAC 392-400-610 (1)-(4).

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 (1)-(4).

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of other health impairments (OHI), attended a District middle school, and his February 22, 2023 IEP was in effect. The Student's most recent triennial reevaluation occurred in February 2021.
2. The Student's February 2023 IEP included annual goals in reading (basic reading, fluency, comprehension), written expression (paragraph writing), and math reasoning (one/two-step word problems), with progress reporting to occur quarterly. The Student's February 2023 IEP provided the Student with the following specially designed instruction (SDI) in a *special education setting*:
 - Basic reading: 25 minutes/5 times weekly (to be provided by special education staff)
 - Reading fluency: 25 minutes/5 times weekly (to be provided by special education staff)
 - Reading comprehension: 25 minutes/5 times weekly (to be provided by special education staff)
 - Written expression: 25 minutes/5 times weekly (to be provided by special education staff)
 - Math reasoning: 20 minutes/5 times weekly (to be provided by special education staff)

The basic reading, reading fluency, and written expression SDI was to be provided concurrently, with the reading comprehension and math instruction not concurrent with other instruction.

The IEP provided for accommodations in the general education setting, including allowance for breaks, alternative setting for state/District tests, audio/digital books, extended time, modified grading, multiplication chart, shortened assignments, speech to text, and use of a calculator, quiet environment, individualized instruction, and square root/cubed root charts.

3. The District provided the Parent a prior written notice (PWN) on February 16, 2023, outlining the decisions made by the IEP team related to goal areas, SDI, and accommodations.
4. The District's 2023–24 school year began on August 29, 2023.

IEP Implementation: February 22, 2023 IEP

5. District documentation indicated that the Student's teachers each received a copy of the 'IEP at Glance' document of the Student's goals, accommodations, service minutes, and assessment accommodations.
6. For the February 2023 IEP, the District provided the Parent with progress reports quarterly. The progress reports indicated the following related to reading:
 - The Student's progress toward the basic reading goal was reported on May 31, 2023 and November 10, 2023, with ratings indicating the Student was making sufficient progress to meet the goal.
 - Student reading fluency progress was also reported on May 31, 2023, November 10, 2023, and January 29, 2024. Ratings indicated that the Student met the goal in January 2024.
 - Progress on the reading comprehension goal was reported on April 18, 2023, May 31, 2023, and November 10, 2023, with ratings indicating the Student was making sufficient progress.

Across all three reporting periods, teachers commented about increased skills in reading high frequency words, increased ability determining main ideas, and that the Student was working hard to find text to support answers.

Progress on the Student's written expression goal was reported to the Parent on April 18, May 31, and November 10, 2023. The District documents indicated the Student was making sufficient progress to meet the goal at each of the rating periods with teacher comments highlighting progress made using the restate, answer, cite, explain writing rubric.

The Student's progress on the math reasoning goal was also reported to the Parent the same dates, with teacher ratings indicating the Student was making sufficient progress. Teacher comments included that the Student was gaining increased accuracy in completing one-step and two-step equations, though has "difficulty determining what operations to use at times."

7. The final progress reporting for the February 2023 IEP occurred on January 29, 2024, for all goal areas. It was noted that the Student, across all goals, was involved in a reevaluation process.

IEP Implementation: January 2024 Triennial Evaluation and IEP

8. On January 30, 2024, the District held a reevaluation meeting followed by an annual IEP meeting. The consent for evaluation was sent to the Parent on November 27, 2023, and the eligibility meeting invitation was included in the same communication. The eligibility meeting was scheduled for January 30, 2024, and the District communication documents indicated the Parent responded that she would attend the eligibility meeting.

The Student's evaluation team reviewed the evaluation results and discussed eligibility of the Student for special education services, followed by the development of a new IEP.

The evaluation addressed the following: review of existing data, social/emotional (functional behavioral assessment (FBA)), behavior, academic, medical-physical, general education and observation. It was noted that due to an incident on December 6, 2023, the Student had been expelled from school.

The team determined the Student continued to meet the eligibility criteria of OHI, and that the Student "possesses skills significantly below the expected age range in reading, math, written expression and social-emotional" and recommended SDI in those same areas. The evaluation team also recommended the development of a behavioral intervention plan (BIP). The medical-physical information reiterated the Student's diagnosis of unspecified anxiety disorder and its educational implications.

The PWN provided to the Parent following the reevaluation meeting confirmed the Student's eligibility under the OHI category and need for SDI in reading, math, written expression and social-emotional.

9. The IEP team, including the Parent, developed a new annual IEP for the Student on January 30, 2024. The IEP included annual goals in reading (comprehension), written expression (paragraph writing), math reasoning (solving problems using four operations with rational numbers), social/emotional (problem-solving), with progress reporting to occur quarterly. The Student's January 2024 IEP provided the Student with the following SDI in a *special education setting* from January 30–May 13, 2024:
 - Reading comprehension: 30 minutes/5 times weekly (to be provided by special or general education staff)
 - Math: 30 minutes/5 times weekly (to be provided by special and general education staff)
 - Written expression: 30 minutes/5 times weekly (to be provided by special and general education staff)
 - Social/emotional: 30 minutes/5 times weekly (to be provided by special and general education staff)

All these services were to be provided individually and not concurrently.

The Student's January 2024 IEP provided the Student with the following SDI in a *general education setting* from May 14, 2024–January 28, 2025:

- Reading comprehension: 30 minutes/5 times weekly (provided by special and general education staff)
- Math: 20 minutes/5 times weekly (provided by special and general education staff)
- Written expression: 30 minutes/5 times weekly (provided by special and general education staff)
- Social/emotional: 20 minutes/1 time weekly (provided by special and general education staff)

These services were all to be provided individually and not concurrently.

The Student's January 2024 IEP included accommodations in the general education setting, including breaks, alternative setting for state/District tests, audio-digital books, calculator, extended time, modified grading, multiplication table, quiet environment, individualized instruction, shortened assignments, speech-to-text, and text-to-speech.

10. Also, on January 30, 2024, as a part of the IEP process, the team developed a BIP to address behavioral concerns related to verbal and physical altercations the Student has had with peers. The FBA highlighted that the altercations often occur during unstructured or less supervised times of the school day. In addition, the Student's anxiety impacted his attendance at school. The BIP detailed the desired behaviors to be taught and monitored, as well as reinforcers that are effective with the Student.
11. The District also provided a PWN following the IEP meeting of January 30, 2024, that highlighted the discussion and decision the team had regarding goals, the additional of social-emotional SDI, the Student's present levels of performance, and the development of a BIP to help support behaviors.
12. District documentation indicated the Student's progress towards his goals was reported to the Parent on April 19, 2024, as follows:
 - For the reading comprehension goal, the Student's progress was rated as sufficient, and the teacher noted the Student was 'on track' to meet the first objective of the goal.
 - The Student's progress towards his written language goal was also rated as 'sufficient' and 'right on track' to meet the first objective.
 - Math progress was also rated as 'sufficient' and 'on track'.
 - The Student's progress towards his social/emotional goal was rated as 'emerging skill', noting that the Student works well 1:1 with the teacher, and is working toward reaching the first objective.

Special Education Discipline Procedures

13. On August 31, 2023, the Student was involved in a physical altercation with another student and was issued a short-term suspension of three days from September 5 through 7, 2023.
14. The District communicated with the Parent on August 31, 2023, regarding the short-term suspension. The letter included appeal rights, as well as indicating that the Student would be

provided the opportunity to receive educational services during the suspension. All the Student's teachers were notified of the suspension and directed to "send work to the school office for the Student to complete while at home, and to provide hard copies of the materials needed to complete the work." The teachers could also email the Parent with detailed instructions regarding the work needing to be completed and provide digital copies for the Student to access via his Chromebook. District documentation included email correspondence with the Parent regarding assignments and work to be completed.

15. On September 27, 2023, the Student was involved in a disruptive conduct situation where they "led a group of peers" into a restroom knowing that a fight was going to occur. A four-day short-term suspension was imposed from September 28 to October 3, 2023.
16. School administrative staff met with the Student's father on September 27, 2023, to share information about the incident.
17. On September 29, 2023, the District communicated with the Parent regarding the short-term suspension. The letter included appeal rights, as well as indicating that the Student would be provided the opportunity to receive educational services during the suspension. All the Student's teachers were notified of the suspension and directed to "send work to the school office for the Student to complete while at home, and to provide hard copies of the materials needed to complete the work." The teachers could email the Parent with detailed instructions regarding the work needing to be completed and provide digital copies for the Student to access via his Chromebook. District documentation included communication with the Parent regarding assignments.
18. On December 6, 2023, following a verbal and physical altercation with another student, the Student was placed on emergency removal. The District provided the Parent with written notice of the emergency removal on December 7, 2023. The letter stated that the emergency removal began immediately and was in effect through January 4, 2024, and that the Student would have the opportunity to receive educational services during the removal period. The letter further stated that under state law, "an emergency removal must end or be converted to another form of discipline within 10 school days of the removal", and in this case, not later than January 5, 2024. Appeal rights were also detailed in the letter.
19. The District convened a manifestation determination meeting on December 14, 2023, having informed the Parent and invited her to the meeting via a meeting notice sent on December 8, 2023. The meeting included the Parent, school administrators, the special education director, guidance counselor, and school psychologist. The team reviewed the Student's IEP and noted that the Student has not had a BIP as part of his IEP, nor has an FBA been conducted. The Parent shared information about the Student's anxiety and its impact on "getting them to school." The team determined that the conduct in question did not have a direct and substantial relationship with the Student's disability, nor was there a failure of the District to implement the IEP; therefore, the behavior was not a manifestation of the Student's disability.

20. The District provided a PWN on December 15, 2023, documenting the decision that the behavior in question was not a manifestation of the Student's disability. It was further noted that the school administration would decide by December 15, 2023, as to the discipline that would be imposed.
21. On December 15, 2023, the District informed the Parent, via phone call and letter, that the emergency removal would be converted to an expulsion, ending on May 14, 2024. It was explained that under state law, the emergency removal must end or be converted to another form of discipline within 10 school days. It was further explained that expulsions cannot exceed the length of an academic term, which for the school, was one semester (90 days). The District would provide the Student with the opportunity to receive educational services during the period of expulsion and the educational plan would be formalized when staff returned from winter break. Appeal information was also included in the letter, including that a request to appeal the emergency removal must be received by January 4, 2024, and that the Student may apply for readmission before the conclusion of the expulsion.
22. On December 15, 2023, the Parent emailed the school principal to request an informal meeting to appeal the expulsion and offered to meet over winter break. The principal met with the Parent the first week in January 2024, to discuss the expulsion and the meeting concluded without the Parent appealing the expulsion.
23. In January 2024, the director of special education began the process of securing a location to provide tutoring services for the Student during the expulsion, as well as finding a qualified teacher to provide the tutoring services. The Parent was informed of the difficulty securing a location and/or qualified tutor by the director of special education, and she informed the Parent the compensatory services for the days missed (29 days) would be made up. The Parent and District agreed that compensatory services would occur in summer 2024, though an exact schedule was yet to be determined.
24. The tutoring location and tutor were secured on Monday, January 29, 2024, and services began on February 5, 2024. District documentation indicated that the Student's teachers began communicating with the tutor to provide access to school materials and assignments.
25. The tutoring schedule was for five days per week, two hours each day, with the tutor focusing on math, English language arts/writing, social studies, health, and science. The tutoring schedule was modified at the end of April 2024, to a daily schedule of three hours per day.
26. The Parent contacted the assistant superintendent on March 25, 2024, inquiring about appealing the expulsion and learned that an appeal was no longer an option. The Parent was advised to complete an "admission to school" and send it to the school principal.
27. On April 9, 2024, the Parent emailed the "admission to school" form to the principal. She followed up with another email on April 10, 2024, and the principal acknowledged receipt of the Parent's emails and indicated he would respond by the end of the week.

28. The principal called the Parent on April 12, 2024, sharing his concern with allowing the Student to return to school. The principal indicated that a meeting regarding the Student's return would need to take place before April 23, 2024, and the assistant principal would call the Parent to schedule the meeting.
29. The Student's reengagement meeting was held on April 17, 2024, and included two school administrators, both the Student's Parents, the Student's sister, and the Student. The meeting outcomes were that the District would not be petitioning to extend the expulsion, reengagement would occur prior to the expulsion end date, and a proposed school schedule/plan was shared, beginning with partial days as soon as April 30, 2024.
30. On April 25, 2024, a second reengagement meeting was held and included two school administrators, the Parent, Student, and the Student's tutor. The Student was interested in trying first and third periods. A partial school schedule was discussed inclusive of continued tutoring support.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not appropriately implement the Student's IEP during the 2023–24 school year.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 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 child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

In this case, the Student began the school year with an IEP developed in February 2023. Subsequently, a new IEP was developed in January 2024, following the Student's triennial evaluation. The newly developed IEP included a BIP, as recommended by an FBA conducted as part of the triennial evaluation process. In addition, social-emotional services were added to the Student's IEP to address behavioral concerns. The District properly invited the Parent to both IEP meetings and included Parent input in the development process. The District also provided the Parent with goal progress information, quarterly, as required in both IEPs. The progress data indicated the Student was consistently making sufficient progress to meet the goals, even including the period of individual tutoring when the Student was expelled from school, indicating that the IEPs were materially implemented. Therefore, OSPI finds no violation.

Issue 2: Special Education Discipline Procedures – The Parent alleged the District did not properly implement discipline procedures, including alleging the District failed to conduct a manifestation determination meeting or provide educational services during exclusion.

During a 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. In addition, within ten school days of the district's decision to change a student's placement through discipline, the district, parent, and members of the IEP team must determine if the behavior in question was a manifestation of the student's disability.

In this case, the District imposed two short-term suspensions at the beginning of the 2023–24 school year and provided proper notification to the Parent about the suspensions, as well as appeal rights and procedures. The initial suspensions did not represent a change in placement and therefore, no manifestation determination meeting was required at that point. Each of the Student's teachers were notified of the suspensions through the District notification system and directed to collect schoolwork and bring it to the school office, as well as reach out to the Parent regarding assignments. Documentation indicates assignments and resources were shared with the Student and Parent.

In December 2023, the Student was emergency removed following a verbal and physical altercation with a peer. The District provided the Parent written notice of the emergency removal with specific information as to the length of the emergency removal, and to the legal requirement that the removal end or be converted to another form of discipline within 10 days of the emergency removal. Appeal rights and information were provided in the letter. Following the removal, the District scheduled a manifestation determination meeting, within the required timeline, to discuss the behavior in question and whether it was related to the Student's disability. The Parent was provided a meeting invitation and participated in the meeting. The team determined that the behavior was not a manifestation of the Student's disability and that the Student's IEP had been implemented properly. Prior written notification was provided to the Parent following the manifestation determination, outlining the information review and considered, as well as the decisions made by the team.

The District timely converted the emergency removal to an expulsion on December 15, 2023. The principal met with the Parent in early January to discuss the expulsion. The District began efforts, after winter break, to secure a qualified tutor and secure an appropriate location to hold the tutoring sessions. There was a delay in securing a tutor and location, and the District communicated with the Parent that compensatory educational services would be provided for the missed days. The Parent and District subsequently agreed that the compensatory education would be provided during the summer of 2024. Tutoring commenced on February 5, 2024, occurring daily for two hours and the schedule was modified in late April 2024, to daily for three hours.

The District appropriately followed disciplinary procedures, including appropriate notification to the Parent, provision of educational services during the exclusions, conducting a manifestation determination meeting to review the incident, and the Student's behavior in relation to his disability. Educational services were provided during the emergency expulsion, with compensatory services to be provided during summer 2024, to make up for the days missed prior to securing a tutor and location to hold the sessions. Therefore, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 17th day of June, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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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.)