

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-61

PROCEDURAL HISTORY

On April 22, 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 Auburn 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 August 22, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on August 25, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 10 and 13, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on May 13, 2024. OSPI invited the Parent to reply.

On May 22, 2024, OSPI received the Parent's reply to the District's response and forwarded it to the District on May 23, 2024.

On May 22, 2024, OSPI requested additional information from the District. The District provided it the same day, and OSPI sent it to the Parent on May 23, 2024.

On May 24, 2024, OSPI received additional information from the Parent and forwarded it to the District on the same day.

On May 28, 2024, OSPI requested additional information from the District. The District provided that information on May 29, June 4, and June 6, 2024. OSPI sent the information to the Parent on May 29, June 4, and June 6, 2024.

On May 30 and 31, 2024, OSPI requested additional information from the District. The District provided the information on May 30 and June 4, 2024. OSPI sent it to the Parent on May 31 and June 5, 2024.

On June 5 and 6, 2024, OSPI received additional information from the Parent and forwarded it to the District on the same day, respectively.

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

ISSUES

1. During the 2023–24 school year, per WAC 392-172A-03110, has the District developed appropriate individualized education programs (IEPs) for the Student, including ensuring that present levels of performance are consistent with goals, accommodations, and that the Student is being educated in their least restrictive environment (LRE)?

2. During the 2023–24 school year, per WAC 392-172A-03105, has the Student’s IEP been implemented properly?
3. During the 2023–24 school year, per WACs 392-172A-01031 and 392-172A-03110, has the District appropriately considered the Parent’s input into the Student’s IEPs?
4. During the 2023–24 school year, per WAC 392-172A-05147, has the District appropriately considered whether the Student needed a functional behavioral assessment (FBA), or otherwise, addressed concerns regarding the Student’s behavior?
5. During the 2023–24 school year, per WAC 392-172A-05010, has the District followed the proper procedures for prior written notices (PWNs)?

LEGAL STANDARDS

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

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

Parent Input: The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. WAC 392-172A-05001. IEP teams must consider the parents’ concerns and the information that parents provide regarding their child in developing and reviewing their child’s IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b).

Behavior Intervention Plan (BIP): A BIP is incorporated into a student’s IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student’s learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student’s learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student’s school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Functional Behavioral Assessment (FBA): An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining

whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015.

Prior Written Notice (PWN): A PWN must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. It ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The PWN should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. A PWN is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

Compensatory Education: 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, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or 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.

FINDINGS OF FACT

1. On September 6, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was enrolled at a District middle school and the Student's December 7, 2022 IEP was in effect.
2. The December 7, 2022 IEP indicated the Student was eligible for special education services under the category of other health impairment. The Student's IEP provided specially designed instruction (SDI) provided by a special education teacher in a special education setting from December 8, 2022 until December 7, 2023, as follows:
 - Math: 75 minutes/5 times weekly
 - Reading Comprehension: 75 minutes/5 times weekly
 - Social Emotional: 20 minutes/5 times weekly

None of the SDI was to be provided concurrently. The Student received 1,800 minutes per week of building instructional time, with 850 minutes per week served in the special education setting. The percentage of time in a general education setting was 52.78%.

3. On December 6, 2023, the Student was suspended for two days for fighting, and on December 12, 2023, the Student was suspended for seven days for fighting.
4. On December 12, 2023, the Student's IEP team met for an annual review of the Student's IEP. The IEP provided SDI from December 13, 2023 until December 11, 2024, as follows:
 - Math: 50 minutes/5 times weekly (provided by a special education teacher in a special education setting)
 - Reading Comprehension: 50 minutes/5 times weekly (provided by a special education teacher in a general education setting)
 - Social/Emotional: 10 minutes/5 times weekly (provided by a general education teacher in a general education setting)
 - Social/Emotional: 20 minutes/5 times weekly (provided by a special education teacher in a special education setting)

The SDI in social/emotional in both settings was to be provided concurrently with other areas. The Student received 1,800 minutes per week of building instructional time with 250 minutes per week served in the special education setting. The percent of time in a general education setting was 86.11%.

5. A December 14, 2023 PWN stated, "The IEP team is proposing a new and current IEP. The action will be initiated on: 12/13/2023."
6. On January 8, 2024, the Student was suspended for 10 days for fighting.
7. On January 17, 2024, a manifestation determination meeting was held. At this point, a functional behavioral assessment (FBA) had not been done, and a behavioral intervention plan (BIP) was not in place.

A PWN, dated January 17, 2024, stated:

[Student] was suspended for more than 10 days and the behavior was deemed a manifestation of her disability.

...

Parents requested that student attend [online] for the remainder of the year. Services will be recouped in a neutral location off...campus.

SDI hours are as follow: 9 hours of tutoring (1.5 hours 2 times per week for 3 weeks).

The action will be initiated on: 01/18/2024.

Based on this PWN, OSPI requested additional information from the District. OSPI asked what the nine hours of tutoring related to, and the District stated this was "the SDI provided during the time of her removal due to the January 8 disciplinary action" and stated, regarding scheduling this compensatory education, "Parent did not respond to the teacher that was assigned to conduct the tutoring or to a representative from our Student Special Services department attempting to schedule the services, so the Student has not received the services to this date." OSPI also asked whether the Student received SDI during the seven-day suspension that began on December 12, 2023, and the District responded, "no."

8. Meeting notes, dated January 18, 2024, stated, in part:

- The Parent voiced concerns about the discipline imposed on the Student. She reported that "her daughter has been a victim of harassment and bullying."
- The Director of special education (director) suggested that the last IEP did not have behavior challenges checked and that no "Positive Behavior Support (PBS) plan"¹ was attached.
- The Parent indicated she "refused to have a PBS follow her daughter which would not allow her to attend college. Parent was assured that a (PBS) plan would not impact her ability to attend college."
- The school psychologist explained a PBS plan was attached to the IEP and is meant to be a support to the Student and provide guidelines for teachers and staff to follow when interacting with the Student.
- "The school psychologist stated that a sample of a PBS plan could be sent home to review and see what a support plan looks like and the differences in a behavior contract. The parent agreed to review the document."
- The "Parent indicated she believes the challenges her daughter is having also stem from the fact the IEP was not followed (because there was no data at the IEP meeting)."
- The team discussed the IEP minutes, and no changes were recommended.
- The director indicated that given the team's agreement that the behavior was a manifestation of the Student's disability, that the Student could return to school tomorrow.
- "The assistant principal indicated she could continue in the google classroom so that she could finish her classes this semester and get her grades, before joining [online]."

9. On January 23, 2024, the director emailed the Parent:

In the Manifestation document sent by [case manager], it was noted that your daughter's behavior WAS a result of her disability. In the notes, [case manager] indicated that she did implement the IEP as written and had data to support that...The team discussed the need for a Positive Behavior Support Plan (PBS plan) to attach to the IEP. You were concerned about doing so and the team determined that [school psychologist] would send you a copy of a draft PBS plan so that you could see it as a document to support your daughter's needs. The next step would be to meet as a team to discuss support needed for your daughter in a PBS plan.

The Parent replied:

At the end of the meeting it was stated that the behavior was linked to her disability and that the school did not implement her IEP. I also stated in the meeting...that she had not received S & E (social & emotional) per her IEP since the beginning of the year. Also at her IEP meeting [case manager] could not provide proof of services being rendered and stated that she checks in with my daughter in the mornings and could not say 100 percent that those services were offered...

Again, I will not sign nor allow my daughter to be placed on a 'Behavioral contract' so please do not send me an invite to that meeting you are mentioning and again I would like a letter to reflect what was stated at the end of our meeting last week.

¹ The District stated it combines the FBA and BIP process into one document, which they titled a "Positive Behavior Support Plan."

10. On January 24, 2024, the District notified the Parent that the Student was accepted to the District's online alternative learning environment (ALE) program.

OSPI requested additional information from the District on the ALE, and the District responded, as follows:

- Did the Student receive any SDI after the end of her January 8, 2024 suspension and until the beginning of her attendance at ALE?

No, parent did not respond to attempts to schedule the tutoring services offered during the time that the student was out on disciplinary action, and the student did not return to [her school] when she was eligible to once the disciplinary action ended on January 22, 2024.

- The District's response says the Student enrolled in ALE on January 27, 2024. Do you mean that on this date the Student began taking her classes at ALE?

Our records indicate that the student enrolled at...[o]nline on January 27, 2024. She would have begun taking classes...on January 29, 2024, which was the beginning of the second semester.

11. On January 24, 2024, the school psychologist emailed the Parent, as follows:

As indicated as a part of the manifestation, I am attaching a sample Positive Behavior Support (PBS) plan for your viewing so that you may see the difference from this plan (which is a part of an IEP) and a behavior contract. The purpose of this plan is to gather information from individuals that know the student (parent, student, teachers, and others) to gain a better understanding of how a student may respond in certain situations. It will focus on a student's strength, triggers, motivations, and strategies for teachers, staff (let the educators know what they should be doing). If you are ok with us moving forward with the plan after reviewing the sample, we will begin the process of gathering information to put the plan together and you and your daughter will be a big part of that process. If you still do not want us to proceed with the plan, we will make note of it and look for alternative ways to support [Student].

...I agree that things could have been handled differently. It would have been best practices to let [Student's] case manager know what was going on. However, because [case manager] did not know the trouble that [Student] was having, did not mean that she did not implement the IEP. She provided her the Social emotional services on her IEP concurrently (together) with her math class. She worked on the goals that were stated on her IEP. Your correct that [case manager] did not have formal documentation of these minutes and services, as we usually don't document SEL minutes delivered in the classroom. In this case, parents are provided with documentation via progress reports and teachers make more informal notes about a student's progress based on observations. Because we don't have a form for this per say, [case manager] created one that she could begin documentation more formally from the date of your IEP. She is not back dating information and will not provide you with back dated information. My understanding is that [Student] was only here two days from the date of the last IEP. One of the days she was with the counselor and [case manager] has documentation for the other day that she can provide you with.

FYI/Example: because the PBS plan is a part of the IEP, if she had a plan that stated that the staff is to notify [Student's] case manager every time there is a behavior incident and this was not done, this would have been noted as a failure to implement [Student's] IEP. This is why I stress the importance of having this plan in place. It lays out many needed details.

12. On February 3, 2024, the case manager emailed the Parent:

Please find attached the final manifestation which indicates the amount of time/services [Student] will receive due to out of school suspension. I am proposing that we set up two meetings a week for the next three weeks (not including mid-winter break) on Tuesday and Thursday. Each session will be 1.5 hours long in which we will cover IEP goals in the areas of Math, Reading and SEL.

13. On February 26, 2024, the parties met. Meeting notes documented, in part:

[School psychologist] states there was a need to look at FBA and BIP. Parent was sent a copy and she elected not to do so.

...

Advocate wants to move forward with FBA and BIP and then amend the IEP to reflect the needs of the student. [School psychologist] says there will need to be additional assessment in addition to the material we would gather, a consent form can be sent to the parent.

...

[Case manager 2] describes what SDI looks like...[o]nline. Service minutes are different just because no 55 minute periods but total services minutes are roughly the same. She provides modification and accommodations.

Soc/Emot[ional] is an additional class. Is math at grade level? Yes but sp ed teacher provides scaffolds for that instruction. The times in her schedule are not 50X5 but total minutes per week. We are currently 630 minutes per week. Also available for students to email and indicate if they have concerns or are stuck with something.

[School psychologist] says 30-45 minutes during the day for FBA interview with parent and student and can do in person or online. Parent needs approval to go on any district property...Parent indicates the proper permission was not obtained.

Next Steps

- [School psychologist] will obtain written permission for the FBA at the time that she meets with parent and student.
- The IEP team will meet in a few weeks (date, time and location will be determined) to discuss Positive Behavior Support Plan (FBA and BIP), amend the IEP and discuss change of placement.

14. On April 22, 2024, the Parent filed a complaint with OSPI, alleging:

- There was a shortage of SDI services provided to the Student.
- The District did not consider Parent input.
- There was a failure to provide the Student a safe learning environment.
- There was a failure to provide the Parent PWNs prior to their initiation date.
- And, that the Student's IEPs are missing information, such as, but not limited to:
 - "Not being updated since 12/12/2023 even though Student is now receiving her education online and the service minutes do not match up."
 - "Parent concerns not listed."
 - "Student performance or assessment scores not listed."
 - "Not documenting behavior impeding Student's learning or that of others despite suspensions for 12/06/2023 and 12/12/2023."
 - "Present levels of educational performance and measurable annual goal for reading do not match."

- "Present levels of educational performance and measurable annual goal for social/emotional do not match current social interactions causing two suspensions."
- "Accommodations for state or districtwide assessments do not match the accommodations page."
- "LRE is incomplete and missing."

15. On May 10 and 13, 2024, OSPI received the District's response to the complaint. Regarding the first issue, IEP development, the District responded that "deficiencies were noted" in both the Student's December 2022 and 2023 IEPs. The District proposed training as a corrective action.

Regarding the second issue, implementing the IEPs, the District responded that there were times when not all services in the Student's IEP were provided, stating:

Between...9/6/23 and December 12, 2023 math services were not provided in alignment with the Student's IEP...the student received 56 minutes per day of this instruction, not 75 minutes per day required by the IEP.

Between...9/6/23 and 9/22/23, the Student was mistakenly placed in a general education ELA class...without special education support. During this time period, she did not receive specially designed instruction in reading.

...

Once the class placement error was recognized, the Student's schedule changed, and she was placed in a general education co-taught ELA class on 9/27/23. This class met for 56 minutes, 5 days per week. The student received 56 minutes of specially designed instruction in reading comprehension by certificated special education teacher...Though appropriate specially designed instruction was provided during this time, the student received 56 minutes per day of this instruction, not the 75 minutes per day required by the IEP. Additionally, the instruction occurred in the general education setting, not the special education setting documented in the IEP.

...

Between...9/6/23 and 12/12/23, the Student was provided with specially designed instruction in the area of social/emotional concurrent with her math instruction in her first period class with [case manager]...Though appropriate specially designed instruction was provided during this time, the IEP indicated that this instruction was to be delivered separate from, not concurrent with, other areas of special education service.

The District noted that progress reports documenting the Student's progress on the December 2022 IEP goals indicated that the Student met her math goals, but not her reading and social/emotional goals.

Regarding the period after the Student enrolled in the online school, the District stated:

The Student enrolled [in an online school] on 1/27/24. [That school] is a fully remote...ALE. Students are required to participate in a minimum of one hour of live instruction weekly and can participate asynchronously for the remainder of their instruction. For students with IEPs, expectations for increased synchronous participation are put into place in alignment with their special education service minutes. The Student's IEP remained unchanged when she enrolled in [the ALE], and a synchronous instructional schedule was developed to align as closely as possible with the IEP.

The schedule indicates that the Student's 50 minutes per week of social/emotional services in the general education setting are provided by her homeroom general education teacher...however, it was determined that this instruction has not been specially designed.

...

The Student's 100 minutes per week of social/emotional services in the special education setting are provided from 8:30 to 9:00 on Tuesdays and Thursdays and 11:00-12:00 on Fridays. Instruction is provided in a small-group format, with lessons targeted at the Student's goals.

The Student's reading services are provided in both the general education and the special education settings. She is scheduled to participate in reading instruction with a general education teacher, for 30 minutes on Tuesdays and 60 minutes on Thursdays. She is scheduled to participate in reading instruction with a certificated special education teacher, for 30 minutes, 5 times a week. During the time that she is in the general education setting for reading, [with the certificated special education teacher] or a paraeducator are also there to make adjustments to the lessons, pre-teach and re-teach vocabulary, chunk assignments, and provide graphic organizers to support identification of key details. During the time that the Student receives services in the special education setting, instruction is directly targeted at her IEP goal.

The Student's math services are provided in the special education setting for 90 minutes on Tuesdays, 60 minutes on Thursdays, and 60 minutes on Fridays. Instruction on grade-level standards is provided in an individual or small-group setting, aligned to grade-level standards, scaffolded to support the Student's access to those standards, and targeted to the Student's goals.

...Student does not regularly attend the class sessions that have been scheduled. Her attendance log indicates that when the Student logs on, she often does so later than the scheduled start time for the session. She logged on 8 times in February, 21 times in March, and 5 times in April. Despite any inconsistencies between the Student's schedule and her IEP and her frequent non-attendance, the Student is making progress toward most of her IEP goals and is approaching the goal target for her math goal.

As corrective action, the District proposed compensatory education (reading 11 hours, social/emotional 4 hours), stated it planned to convene the Student's IEP team on May 24, 2024, and stated it planned to provide staff with training. The District stated:

During this convening, the team will determine whether the IEP service minutes need to be revised and/or whether the student's schedule needs to change to align with the service minutes and settings that are currently documented. Finally the District proposes training for [school] and...[o]nline special education staff members. Training for [school] staff members will focus on the topics outlined above, as well as developing systems to ensure that students are scheduled appropriately based on their identified special education needs and ensuring that revisions to IEPs are made when service minutes or locations change. Training for...[o]nline staff members will focus on a review of previous training provided on the topic of specially designed instruction, as well as appropriate determining when IEPs need to be revised.

Regarding the third issue, Parent input, the District responded, in part, "Though...there was not a statement of parent's concerns in the team considerations of the Student's IEPs that

were in effect during the 2023-24 school year, the team meeting notes clearly identify that the parent provided input into each IEP. "

Regarding the fourth issue, behavior concerns, the District responded:

[T]he IEP team addressed concerns regarding the Student's behavior by adding social/emotional services minutes in the general education setting to the December 12, 2023 IEP. Additionally, at the manifestation determination meeting on January 18, 2024, during which the team determined that the behavior was a manifestation of the student's disability, the school staff members indicated that a positive behavior support (PBS) plan (the district's terminology for a combined functional behavioral assessment and behavior intervention plan) needed to be developed. The Parent refused a PBS plan because she was concerned that the plan would follow the Student to college and have a negative impact on her future. The school staff members explained the purpose of a PBS plan and offered to send a copy of a blank plan home for the Parent to review. The school psychologist...emailed the Parent on 1/24/24 to provide that copy and to share more information about the purpose of such a plan. The Parent responded to that email on 1/24/24 reiterating that she would not consent to development of a PBS plan. During the IEP team meeting on 2/26/24, the Parent Advocate indicated that the Parent wanted to move forward with an FBA and behavior intervention plan. Signed consent for the FBA was received on 3/5/24, the same date that parent and student interviews were conducted. A meeting to review the FBA and consider revisions to the Student's IEP, including a Behavior Intervention Plan, is anticipated on 5/24/24.

Regarding the fifth issue, PWN procedures, the District responded in part that two PWNs were provided to the Parent during the school year:

This first PWN was dated 12/14/23, with an initiation date of 12/13/23...Student's IEP case manager, reports that it was provided to the parent on the same day as the IEP meeting (12/12/23), but there is not documentation to support that. The language in the PWN meets the WAC criteria for content, but the date on the PWN indicates that it was provided after the action was initiated, which does not meet the requirement that notice be provided a reasonable time before initiating the action. The second PWN documenting the services being offered as a result of the student being removed for discipline for more than 10 days in the school year was dated 1/17/24, with an initiation date of 1/18/24. The content met WAC criteria, but as the Parent stated in her complaint, it was not provided to the parent until 2/3/24. This does not meet the requirement that notice be provided a reasonable time before initiating the action.

As a remedy, the District proposed training.

16. On May 22, 2024, the Parent submitted her reply to the District's response. Regarding the first issue, IEP development, the reply stated, in part, "I disagree with their proposed corrective action because the school district has not acted in good faith about scheduling and holding an IEP team meeting since my daughter's 12/12/2023 IEP."

Regarding the second issue, IEP implementation, the Parent's reply stated, "I continue to state that my daughter's IEP is not being properly implemented. The current example is the email from the principal...at [ALE] (5/7/2024) telling my daughter that she will now have to take tests verbally which is not an accommodation on her 12/12/2023 IEP."

Regarding the third issue, Parent input, the Parent's reply stated:

Again, I will refer to my Exhibit 3 under the 12/12/2023 sections Team Considerations and the Prior Written Notice that list none of my concerns and demonstrate that I wasn't given the opportunity to participate as an IEP team member.

I provided my consent on 3/5/2024 for the FBA, the same day as my daughter was interviewed by the school psychologist. The meeting is scheduled for 5/23/2024 at 4:00-4:30 p.m., however, it was not completed in the 35-school day timeline.

Regarding the fourth issue, the Parent's reply stated:

I disagree with the district's explanation and concern about my daughter's behavior at the 12/12/2023 IEP because the IEP team does not address any behavior concerns under 'Team Considerations', 'Related Services', 'Least Restrictive Environment', nor the 'Prior Written Notice' indicating that the IEP team documented the student's behavior by 'adding social/emotional services minutes in the general education setting'.

At the 1/18/2024 manifestation meeting, the district's FBA and PBS are all one document presented to me. I know that the FBA was required since my daughter had been suspended 19 days, however, the IEP team had just met on 12/12/2023 with no concerns documented on it about needing a Positive Behavior Plan, nor was it listed as a needed accommodation.

Regarding the fifth issue, PWN procedures, the Parent's reply stated, in part, "I do not feel that training only one school would solve any or all the issues I alone have had to deal with in getting her services and program handled correctly, let alone legally."

17. On May 23, 2024, the Student's PBS was developed. This PBS included an FBA. The FBA was not completed within 35 school days after the Parent's March 5, 2024 consent. The FBA stated, in part, "This PBS plan was created separately from an IEP meeting, and is being added as an amended component of the...IEP amendment meeting scheduled for May 30th 2024."

18. On May 30, 2024, the Student's IEP team met and amended the Student's IEP. The IEP provided SDI from June 11 until June 21, 2024, and then from June 22 until December 11, 2024, as follows:

- Math: 55 minutes/5 times weekly (provided by a special education teacher in a special education setting)
- Reading Comprehension: 25 minutes/5 times weekly (provided by a special education teacher in a general education setting)
- Reading Comprehension: 30 minutes/4 times weekly (provided by a special education teacher in a special education setting)
- Social/Emotional: 30 minutes/4 times weekly (provided by a special education teacher in a special education setting)
- Reading Comprehension: 60 minutes/2 times weekly (provided by a general education teacher in a general education setting)
- Math: 30 minutes/4 times weekly (provided by a special education teacher in a special education setting)
- Math: 60 minutes/2 times weekly (provided by a general education teacher in a general education setting)

- Social/Emotional: 55 minutes/5 times weekly (provided by a special education teacher in a special education setting)

The Student received 1,800 minutes per week of building instructional time with 910 minutes per week served in the special education setting. The percent of time in a general education setting was 49.44%. None of the SDI services were to be provided concurrently.

In the “Description of Services” the IEP stated:

At [online school] academic instruction is delivered...at grade level. [Student] receives SDI for Math, Reading and Social emotional, in small group special education settings as well as in the general education settings. In an in-person setting [Student] will participate with her general education peers, for all parts of his school day and after school activities, except for times in which she receives specially designed instruction for Math and Social Emotional/Behavioral. Her ELA services will be best provided in a co-taught general education classroom Language arts classroom.

A PWN, dated June 3, 2024, stated, in part:

Upon review of [Student’s] FBA/BIP the team determined it was necessary to amend the IEP. New Social emotional goals. Correcting and editing of pervious goals and services.

...

Parent concerns: 1. She is safe in any school setting. 2. She continues to make academic progress into 8th grade 3. Ensure the positive behavior plan is followed; 4. Being sure her daughter will be socially and emotionally prepared for 8th grade and beyond; and 5. Parent indicates her daughter needs to go to school in-person.

The action will be initiated on: 06/07/2024.

19. On June 4, 2024, the District conceded that the Student is currently receiving only 210 minutes of math SDI per week.

CONCLUSIONS

Issue One: IEP Development – Regarding the first issue, the Parent’s complaint alleged, in part, the Student’s IEPs were incomplete or missing information. 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.

The District has conceded that there were deficiencies in developing the December 2022 and 2023 IEPs², and has suggested staff training as a corrective action. Based on this concession, OSPI finds a violation as to the first issue and will order the correction action of staff training.

Issue Two: IEP Implementation – Regarding the second issue, the Parent’s complaint alleged, in part, that the Student did not receive her complete SDI from her December 2022 and 2023 IEPs.

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

² In response to the Parent’s concerns, the IEP team met May 30, 2024 and amended the Student’s IEP.

failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

The District has admitted that it did not provide all the Student's SDI in alignment with the Student's IEPs. Based on this concession and the documentation reviewed in the complaint, OSPI finds: (1) The District materially failed to implement the Student's SDI, denying the Student a free appropriate public education (FAPE); and (2) a violation as to the second issue. As a corrective action, the District has proposed compensatory education for social/emotional (4 hours) and reading (11 hours).

Based on this case's record, OSPI has determined the Student has missed about 7,375 minutes of SDI as follows.

Math: The Student was not provided approximately 2,830 minutes of math SDI based on the calculations below. Given the Student made progress in math, and because there is no expectation that a student receives 100% of their minutes while suspended, and given there is no requirement to provide day-for-day compensation for time missed³, OSPI will order approximately a quarter of the missed time or 720 minutes as compensatory education.

December 2022 IEP

- 1,350 minutes missed. The District conceded that between September 6 and December 12, 2023, the Student received 56 minutes per day of math SDI, not 75 minutes per day required by the IEP.
- 150 minutes missed. December 2, 2023 suspension for two days.

December 2023 IEP

- 350 minutes missed. December 12, 2023 suspension for seven days.
- 500 minutes missed. January 8, 2024 suspension for ten days.
- 480 minutes missed. The District stated that currently, the Student's math services are provided for 90 minutes on Tuesdays, 60 minutes on Thursdays, and 60 minutes on Fridays. This amounts to 210 minutes of math SDI per week instead of 250 minutes between January 27 and June 7, 2024, as required by the December 2023 IEP.

Reading: The Student was not provided approximately 3,195 minutes of reading SDI based on the calculations below. Given that there is no expectation that a student receive 100% of their minutes while suspended, and given there is no requirement to provide day-for-day compensation for time missed, OSPI will order approximately a quarter of the missed time or 780 minutes of compensatory education.

December 2022 IEP

- 975 minutes missed between the dates of September 6 and September 22, 2023.
- 1100 minutes between the dates of September 27 and December 12, 2023.

³ See, *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or 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.

- 150 minutes missed. December 2 suspension for two days.

December 2023 IEP

- 350 minutes missed. December 12, 2023 suspension for seven days.
- 500 minutes missed. January 8, 2024 suspension for ten days.
- 120 minutes missed. The District stated that currently, the Student's reading services are provided with a general education teacher, for 30 minutes on Tuesdays and 60 minutes on Thursdays. She is scheduled to participate in reading instruction with a certificated special education teacher, for 30 minutes, 5 times a week. This amounts to 240 minutes of reading SDI per week between January 27 and June 7, 2024, instead of 250 minutes as required by the December 2023 IEP.

Social/Emotional: The Student was not provided approximately 1,350 minutes⁴ of social/emotional SDI based on the calculations below. Given that there is no expectation that a student receive 100% of their minutes while suspended, and given there is no requirement to provide day-for-day compensation for time missed, OSPI will order approximately a quarter of the missed time or 360 minutes of compensatory education.

December 2022 IEP

- 40 minutes missed. December 2 suspension for two days.

December 2023 IEP

- 210 minutes missed. December 12, 2023 suspension for seven days.
- 300 minutes missed. January 8, 2024 suspension for ten days.
- 800 minutes missed. The District stated that social emotional instruction provided in the ALE's program's general education setting was not actually specially designed and all students were receiving the same instruction.

Finally, the Parent expressed in her reply to the District's response that the Student's IEP was not being implemented properly because the ALE principal informed the Student that "she will now have to take tests verbally which is not an accommodation on her 12/12/2023 IEP." However, this statement by the principal does not reflect a failure to implement the IEP as this is not an accommodation in the IEP, and thus not an implementation failure. If the Parent has concerns about verbally taking tests, the Parent should request that the IEP team discuss this issue.

Overall, as discussed above, OSPI finds a violation as to the second issue and the District will provide compensatory education.

Issue Three: Parent Input – Regarding the third issue, the Parent's complaint alleged that the District did not consider Parent input and that the IEPs did not list the Parent's concerns. The District responded, in part, "Though...there was not a statement of parent's concerns in the team

⁴ The District conceded that between September 6 and December 12, 2023, the social/emotion SDI was provided concurrently with math despite the IEP indicating that this instruction was to be delivered separate from, not concurrent with, other areas of SDI. Given that the social/emotional SDI was provided, despite being in the wrong setting and concurrently, OSPI is not considering that period as a material failure to provide the special emotional services for the compensatory education calculation.

considerations of the Student's IEPs that were in effect during the 2023-24 school year, the team meeting notes clearly identify that the parent provided input into each IEP."

The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a FAPE to the student. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP.

The Parent's argument that the team considerations section of the IEP and the prior written notice do not list her concerns and thus demonstrate that she wasn't given the opportunity to participate as an IEP team member do not automatically establish a violation. Based on a review of the present case's record, including meeting notes and emails, it is apparent that the Parent had the opportunity to provide input at the meetings and the District considered the Parent's concerns. OSPI notes a district is not required to adopt or agree with every request made by a parent, nor does disagreement necessarily mean a parent was not able to participate. As stated above, the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. For these reasons, OSPI does not find a violation regarding the third issue.

Issue Four: FBA – Regarding the fourth issue, the Parent's complaint alleged the District failed to provide the Student a safe learning environment. The District responded:

[T]he IEP team addressed concerns regarding the student's behavior by adding social/emotional services minutes in the general education setting to the December 12, 2023 IEP. Additionally, at the manifestation determination meeting on January 18, 2024, during which the team determined that the behavior was a manifestation of the student's disability, the school staff members indicated that a positive behavior support (PBS) plan ... Signed consent for the FBA was received on 3/5/24, the same date that parent and student interviews were conducted. A meeting to review the FBA and consider revisions to the Student's IEP, including a Behavior Intervention Plan [took place in May 2024].

In reply to the District's response, the Parent's stated she disagreed with the District's explanation and that the December 2023 IEP did not address behavior concerns.

The district must obtain the parent's consent to conduct an FBA, and the district must complete it within 35 school days after the district receives consent. Based on that FBA, the IEP team may decide to create a BIP. A BIP is incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behaviors(s) for a specific pattern of behavior of the student.

Here, the documentation indicates that the District did take steps to address the Student's behavior needs. As the District stated in its response and the relevant documentation shows, the IEP team added additional special/emotional services to the December 2023 IEP. The present case's record also shows that the District conducted a manifestation determination following disciplinary incidents and ultimately conducted an FBA and created a BIP. The Parent's allegations that the District did not address in writing the Student's behavior under certain sections of the Student's IEPs and PWNs is not sufficient to establish a violation as the District did take appropriate steps to address the Student's behavior needs. Therefore, the District adequately addressed the behavioral concerns that were occurring with the Student.

Despite the District's actions in this case, OSPI finds a violation as to the fourth issue because the District did not complete its FBA within 35 school days as is required by the applicable regulations and will order training as a corrective action.

Issue Five: PWN – Regarding the fifth issue, the Parent's complaint alleged the District failed to provide the Parent the PWNs prior to their initiation dates.

PWN must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student. It ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP.

The District has conceded that it did not provide the Parent the PWNs prior to the implementation of the changes to which the parties agreed and has suggested staff training as a corrective action. Based on this concession, OSPI finds a violation as to the fifth issue and will order staff training as a corrective action.

CORRECTIVE ACTIONS

By or before **August 1, 2024, August 15, 2024, September 26, 2024, February 28, 2025, and May 14, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education⁵

By or before **September 12, 2024**, the District will meet with the Parents to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Math: 720 minutes
- Reading: 780 minutes
- Social-Emotional Behavior: 360 minutes

⁵ Compensatory education is an equitable remedy that does not need to be awarded on a one-to-one ratio with the missed educational time because it is often provided on an individual basis instead of a classroom setting that may have multiple students.

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 schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. By or before **September 26, 2024**, the District will provide OSPI with documentation of the schedule for services.

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 **April 30, 2025**.

By or before **February 28, 2025**, the District will send OSPI an update on the compensatory education that has been completed. By or before **May 14, 2025**, the District will provide documentation to OSPI that it has completed the compensatory education.

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. By or before **May 14, 2025**, the District must provide OSPI with documentation of compliance with this requirement.

DISTRICT SPECIFIC:

Training

The District will develop and conduct a training on IEP development, including the following topics:

- IEP development, including documenting team considerations, development of present levels of performance, alignment of goals to present levels of performance, and documentation of accommodations;
- PWNs, including the requirement to send PWNs a reasonable amount of time prior to the action; and,
- Completing evaluation within the time limits required by applicable regulations.

The training will be provided to the special education staff and administrators at the school the Student formerly attended and the Student's current ALE program. The District will provide the trainer with a copy of SECC 24-61's decision.

By or before **August 1, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By of before **August 15, 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 22, 2024.

By or before **September 13, 2024**, the District will conduct the training mentioned above.

By or before **September 26, 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.

Dated this 18th 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.)