

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-67

PROCEDURAL HISTORY

On May 3, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) regarding a student (Student) attending the Kelso School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 3, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 8, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 24, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on May 28, 2024. OSPI invited the Complainant to reply.

On June 11, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on same day.

On June 14, 2024, OSPI requested that the Complainant provide additional information, and the Complainant provided the requested information on June 20, 2024. OSPI forwarded the information to the District the same day.

OSPI considered all information provided by the Complainant 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 May 4, 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. During the 2023–24 school year, did the District implement those portions of the Student's individualized education program (IEP) that related to behavior services?
2. During spring of 2024, did the District follow proper procedures related to reevaluation timelines?
3. During the 2023–24 school year, did the District follow proper consent procedures under WAC 392-172A-300(3)–(4)?
4. During the 2023–24 school year, did the District follow proper prior written notice procedures related to the reevaluation of the Student? Specifically, did the District comport with WAC 392-172A-03020(1)?

LEGAL STANDARDS

IEP Implementation: A district must 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 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).

Reevaluation Timeline: The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1).

Prior Written Notice: Prior written notice ensures that 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 prior written notice 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. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background: 2022–23 School Year

1. During the 2022–23 school year, the Student was a five-year-old kindergartener who attended an Educational Service District (ESD) program. The Student was eligible for special education under the eligibility category of developmental delay.

2. In January 2023, the Student was reevaluated. The reevaluation stated, in part:
[Student] is a student who has recently received a diagnosis of Attention-Deficit/Hyperactive Disorder (ADHD), Conduct Disorder (CD), and Generalized Anxiety Disorder (GAD). Diagnosis was obtained from [physician] at [clinic] in [city], WA. These conditions appear to significantly limit [Student's] access as he demonstrates extreme social/emotional and behavioral deficits which results in destructive, aggressive, and disruptive behaviors. Cognitively, recent assessment shows [Student's] overall ability to be within the average range...Lastly, behavioral notes show [Student's] significant behaviors can often occur due to reasonable requests or triggers that would be a non-issue to typical developing peers. This shows a heightened state of alert that often results in extreme instances of aggression and destruction....

The Student was found eligible under the eligibility category of other health impairment and services in the areas of behavior and social/emotional were recommended.

3. On May 23, 2023, the Student's team amended the Student's individualized education program (IEP) and reviewed the functional behavioral assessment (FBA) and behavioral intervention plan (BIP). The Parent concerns about the IEP were as follows:

IEP accommodations not being followed for: preferential seating, adult proximity. [Student's] desk is closest to the classroom door, and not within proximity to the teacher's desk. This allows him easy access to elope from class and provides distraction from being able to see out the door window easily. We may need to change the verbiage of the accommodation so that it is clearer to staff that he needs to have preferential seating near the teacher, not just an adult.

IEP accommodation not being followed for: 'reduce assignment length and look for quality over quantity'. From my personal observation, notes/conversations from staff and from talking with [Student] it does not seem like his assignment length is being reduced which is leading to arguments and escalations. I would like for him to build up to a full assignment load, but for now when staff can see that he is getting overwhelmed, specifically in ELA they need to reduce the assignment length. This will decrease frustration, increase compliance and self-confidence. If he does complete a full load, he needs tons of positive praise to keep him motivated to do it again and again.

IEP matrix not being followed: School counselor, 20 minutes/day, 4 days/week. Per daily handwritten notes from staff and conversations with [Student], he has not been seeing the school counselor. Instead [Student] attends free choice and participates in the end of the day routine with his class. If the school is not utilizing this service with the school counselor and [Student] is doing well during this time, I think we should delete this service from the matrix. I am fine with him having extra class time at the end of the day since it has been going well. I would also like to add, if changes to his daily schedule happen like this (not seeing the counselor) I need to be notified formally in writing in the future. Any change to his matrix requires this.

Functional Communication goal. This goal sounds reasonable and fits in with the goals and accommodations already in place. The issue lies in the delivery of this goal by a paraeducator. This goal and pre-teaching for the goal should be delivered by the [registered behavior technician] RBT. His neurological disabilities also make it hard for him to hear, process and express himself correctly, trained staff need to work with him on this.

I propose this goal be put under the direction of the [board certified behavior analyst] BCBA and delivered by the RBT and classified in the social emotional area in the IEP.

Matrix: 45 minutes per day for teaching the functional communication goal in KC Commons is excessive. This teaching can be incorporated into his existing 1:1 time in the resource room or in the pod next to the kindergarten classes, as the BCBA recommended. A separate time slot is not necessary and will greatly take away from his access to the general education setting. He needs coaching and small groups, but he also needs practice in GenEd and the opportunity to use those skills and be rewarded for success.

The IEP provided goals in the areas of behavior and social/emotional and the following specially designed instruction and supplementary aids and services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Behavior	Special Education Paraprofessional	Special Education Teacher	65 Minutes/5 Times Weekly	Special Education
Social/Emotional	Special Education Teacher	Special Education Teacher	60 Minutes/5 Times Weekly	Special Education
Social/Emotional	Registered Behavior Technician	Special Education Teacher	40 Minutes/5 Times Weekly	Special Education

Supplementary Aids and Services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
1:1 Registered Behavioral Tech	Registered Behavior Technician	Board Certified Behavior Analyst	120 Minutes/5 Times Weekly	Special Education
1:1 Support	1:1 Paraprofessional	Special Education Teacher	45 Minutes/10 Times Weekly	Special Education
Sensory/Motor Consultation	Occupational Therapist	Occupational Therapist	45 Minutes/Quarterly	Special Education
School Based Counseling	School Counselor	School Counselor	20 Minutes/1 Times Weekly	General Education
1:1 Support	Behavior Specialist	Special Education Teacher	120 Minutes/5 Times Weekly	Special Education
Behavior Consultation	Board Certified Behavior Analyst	Board Certified Behavior Analyst	240 Minutes/1 Time Monthly	General Education
1:1 Registered Behavioral Tech	Registered Behavioral Tech	Board Certified Behavior Analyst	240 Minutes/5 Times Weekly	General Education
Paraeducator support-lunch time	Special Education Paraprofessional	Special Education Teacher	30 Minutes/5 Times Weekly	General Education

The IEP documented that placement options for the least restrictive environment (LRE) were discussed that included 80–100% in general education, 40–79% in general education, and 0–39% in general education. Based on the fact that the non-academic benefit could not be satisfactorily achieved and the effect the Student would have on the teacher and other students, the Student’s team determined 0–39% would be the appropriate time spent in general education.

The target behaviors for the BIP were elopement, noncompliance, and physical aggression.

4. On August 28, 2023, the team met to amend the Student’s IEP and to discuss the Student’s transfer to a District elementary school. The prior written notice documented that the District proposed the following:
 - “Removing selected accommodation that did not impact [Student’s] access and success in the classroom setting.”
 - “The addition of CBT support on transportation for 2 weeks to train a paraprofessional on supports and strategies that are consistent for [Student]”
 - “The addition of a paraprofessional on transportation for the length of the IEP”
 - “Changing the service provider to a Certified Occupational Therapist monitored by and Occupational Therapist for the consultation service.”
 - “Occupational therapy consultation minutes be change from 45 minutes quarterly to 180 minutes yearly.”

2023–24 School Year

5. At the start of the 2023–24 school year, the Student was a first grader in a District elementary school and was eligible for special education services under the category of developmental delay.
6. On August 30, 2024, the 2023–24 school year began.
7. On September 12, 2023, the Student’s IEP team met to discuss the BIP. According to the prior written notice that accompanied the meeting, the District proposed clarifying the replacement behaviors and adding details on how to prevent a behavior incident, strategies to de-escalate the Student, strategies for responses and recovery. In addition, the District proposed an emergency response protocol (ERP), but it agreed that it would not be active, at the Parent’s request.
8. On October 24, 2023, the school psychologist sent the Parents a reevaluation consent form and a release of information form to communicate with the agencies that were working with the Student.

The “Reevaluation Notification/Consent” form, which incorporated the elements in a prior written notice, stated the Student would be assessed in the areas of medical/physical, academic, and social/emotional behavior and the reevaluation would include a student observation, an FBA, and a review of existing data. The notice stated, in part:

Expanding behavioral supports in [Student’s] current IEP were implemented and have not been effective to reduce target behaviors or enable [Student] to receive educational benefit in the general education setting. The team considered continuing to implement the behavior supports in [Student’s] current IEP without considering changes or revising these supports based on the date from the last evaluation, January of 2023. The team considered conducting a reevaluation without including an updated FBA...This is rejected since [Student’s] behavioral supports, as stated on his current IEP don't presently align with his needs, and existing data does not provide a sufficient basis to determine appropriate revisions to the IEP. While we continue to work with the family to update the BIP based on existing data while reevaluation is pending, current data will be necessary to assist the team in revising the IEP and BIP to support [Student’s] long-term success. Input from the BCBA who has overseen [Student’s] programming indicates the current FBA was written with a clinical focus and updates will be helpful to focus specifically on the school setting.

9. On October 26, 2023, the Parent responded to the school psychologist that she was “not comfortable” with agreeing to the reevaluation, but she was open to having a meeting to discuss the Student’s behavior. Regarding the release of information, the Parent stated she would provide the District with the most recent medical information. According to the Complainant, the Parents refused consent because there was a recent evaluation of the Student, that the Student’s behavior problems were due to the District not implementing the IEP, and the Student had experienced “multiple transitions during the same time period.”
10. On November 11, 2023, the District sent an IEP meeting invitation to the Parent to review the Student’s IEP, BIP, and instructional needs.
11. On November 20, 2023, the team met to discuss the IEP and BIP. Regarding social/emotional behavior, the IEP stated:

Current behavioral data shows [Student] is quick to becoming [sic] physically aggressive towards staff, students, and materials within the classroom when he is denied access to something he wants, or not allowed to escape something he does not want. [Student’s] main motivator seems to be control over the situation, which can often lead to violence and destruction to get what he desires. His behavior is significantly impacting his education, and the education of others within the school community. Within the first three months of school, [Student] had a room clear each month. In addition, he has been suspended for 6 whole days due to his behavioral infractions. [Student] is a disruptive force within the school environment, as he prevents other students from learning, using class materials, and impacting sense of safety.

The Student’s IEP provided goals in the areas of behavior and social/emotional. The IEP provided 20 accommodations, including, in part, parent/teacher meetings every six–eight weeks, extra time, noise buffers, and daily parent communication. The District proposed the following specially designed instruction and supplementary aids and services:

Services 11/30/2023–02/20/2024

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)

Behavior	Paraprofessional	Special Education Teacher	65 Minutes/5 Times Weekly	Special Education
Social/Emotional	Special Education Teacher	Special Education Teacher	60 Minutes/5 Times Weekly	Special Education
Social/Emotional	Behavior Specialist	Special Education Teacher	40 Minutes/5 Times Weekly	Special Education

Supplementary Aids and Services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
1:1 Certified Behavioral Technician	Behavior Specialist	Board Certified Behavior Analyst	45 Minutes/10 Times Weekly	Special Education
1:1 Support	1:1 Paraprofessional	Special Education Teacher	45 Minutes/10 Times Weekly	Special Education
Occupational Therapy Consultation	Certified Occupational Therapy Assistant (COTA)	Occupational Therapist	180 Minutes/Yearly	Special Education
School Based Counseling	School Counselor	School Counselor	20 Minutes/1 Time Weekly	General Education
1:1 Support	Behavior Specialist	Special Education Teacher	120 Minutes/5 Times Weekly	Special Education
Behavior Consultation	Behavior Specialist	Special Education Teacher	240 Minutes/Monthly	General Education
1:1 Support	Behavior Specialist	Special Education Teacher	240 Minutes/5 Times Weekly	General Education
1:1 Support	1:1 Paraprofessional	Special Education Teacher	30 Minutes/5 Times Weekly	General Education

12. The prior written notice that accompanied the meeting stated the District proposed to implement the November 2023 IEP and BIP. The District also proposed a reevaluation of the Student to collect additional information from outside agencies, evaluate academic information, and to conduct an FBA.
13. According to the Complainant, the Parent had requested an independent educational evaluation (IEE). The District argued in its response that the Parents had no right to an IEE because the Parents had not given consent to the evaluation.
14. On November 20, 2023, the Complainant emailed the District's legal counsel the contact information for the private psychologist. On November 21, 2023, the District's legal counsel responded, asking, "Was your request at yesterday's meeting intended to be a request for an IEE (independent education evaluation) at public expense, or are you requesting that this provider be utilized for the reevaluation the District has proposed?"

15. On November 27, 2023, the District's legal counsel emailed the Complainant, asking for clarification whether the Parent's request was for an IEE or to use the private psychologist as the District's evaluator. The Complainant responded, asking if the District would use the private psychologist as the evaluator. The District stated that it agreed to have the private psychologist conduct the evaluation in order to obtain the Parents' consent for the evaluation.
16. On November 28, 2023, the Complainant emailed the District's legal counsel that the Parents withdrew their IEE request and "will agree to a new reevaluation from the District if [private psychologist] conducts the parts of the evaluation that she is able to conduct..."
17. On December 1, 2023, the District special education director (director) emailed the agency, asking what areas the private psychologist would assess and what areas the District's school psychologist would assess. The private psychologist responded, asking for more information about the Student and the purpose of the evaluation.
18. On December 7, 2023, the agency emailed the director about moving forward with the evaluation. The agency wanted to clarify whether this was an "IEE Contract" or a "Single Case Agreement." The agency stated that it was holding dates at the end of January for testing, "so if we are going to make this happen by then we will need movement from both your department as well as the parent..."
19. On December 8, 2023, the District provided the Parents with the consent form.
20. On December 13, 2023, the District provided a prior written notice regarding the proposal for an occupational therapy (OT) interoceptive evaluation and report, which was rejected by the District. The notice included what information and assessments the reevaluation would conduct.
21. On December 14, 2023, the director emailed the agency, stating that the Parent had until December 15, 2023, to provide consent. Otherwise, the agency would release the January evaluation dates.
22. On December 18, 2023, the Complainant emailed the District's legal counsel about who would be conducting the behavior evaluation and their qualifications. The Complainant stated that the Parents had a negative experience with a previous behavior specialist. The District's legal counsel responded:

[Evaluator] has many years of experience in education and training specific to PBIS. That said, the District will eliminate [evaluator's] involvement in the evaluation if that will facilitate receiving the parents' written consent. The District has confirmed that if written consent is received from the parents today, they will be able to keep the appointment schedule that [psychologist] is currently holding. Those appointments will be lost as of tomorrow.

Given the time-sensitive nature of this, the District is not going to reissue the consent form and PWN, but please consider this email exchange confirmation that the District will not

include [evaluator's] observation in the reevaluation if written consent is received from parents today on the forms they have currently been provided...

23. On December 18, 2023, the Complainant emailed the Parents' consent for the evaluation to the District's legal counsel. The evaluation would include assessment in the areas of medical-physical, adaptive, academic, occupational therapy, social/emotional/behavior, and cognitive, along with an FBA, student observation, and review of existing data.

There was no reference to an evaluative placement in the consent form. The Complainant later argued that the evaluation consent form did not include an "evaluative placement" as part of the evaluation and therefore, the Parents did not consent to an evaluative placement.

24. On December 26, 2023, the agency emailed the director about scheduling the evaluation. The agency agreed to move the hold on dates to the beginning of March, hoping the Parents would have completed the paperwork by then.

25. On January 2, 2024, the agency emailed the director about the Parents' consent and stated that two releases of information, a child history form, and a consent form were sent to the Parents. According to the agency, the child history form was not completed by the Parents, but it was unclear whether the Parents had submitted the releases of information and the consent to the agency.

26. On January 12, 2024, the director emailed the Parents about missing the January dates for the evaluation with [psychologist] because the Parents' paperwork was not submitted on time. The director stated that the evaluation could not be completed within the required 35 school days. The email further stated, in part:

We will move ahead with the remaining components of the reevaluation, and we have two options for how to proceed with the assessments we expected to be conducted by [psychologist]. The first option is to have our school psychologist complete the proposed assessments so that the reevaluation can be completed within 35 school days. The second option is to provide consent to extend the timeline for completion of the reevaluation so that [psychologist] can conduct the assessments at her next available appointment in March.

27. On January 16, 2024, the Complainant emailed the agency regarding the schedule for the evaluation. According to the email, the District informed the Complainant that the January slots were gone, and the next available slots were in March 2024. The agency replied that the January dates were lost because the Parents had not provided the necessary paperwork by December 16, 2023. The email stated, in part, "...[Parent] did not complete her Consent, History or Release paperwork within the timeframe allotted there was no reasonable way I could keep the end of January dates while still ensuring that we could schedule all parts of the IEE...."

28. On the same day, the Parent replied that she agreed with the extension to March 31, 2024. The Parent also requested a "manifestation" meeting to discuss the IEP and BIP. On January 17, 2024, the Parent signed the agreement to extend the evaluation timeline.

29. On January 24, 2024, the District conducted a disciplinary manifestation determination review (MDR) resulting from ten or more disciplinary removals. The most recent removal was because the Student was physically aggressive towards staff. The MDR found a relationship between the Student's behavior resulting in the removals and the Student's disability. The MDR also found that the conduct was not a direct result of a failure to implement the IEP. However, the MDR noted there was a lack of consensus; the Parent believed that staff working with the Student did not have access to the BIP.
30. On February 2, 2024, the District emailed the Parents, stating that the District want to propose "the option of placement in a setting that would be able to provide embedded therapeutic supports to help [Student's] behaviors while we gather data for the reevaluation..." The District requested the Parent visit the therapeutic day treatment program (treatment program). The next day, the director sent the Parents a draft IEP for the upcoming meeting.
31. On February 5, 2024, the District conducted another MDR after the Student hit and kicked staff. The MDR again found a direct relationship between the Student's behavior and disability.
32. On February 6, 2024, the Student's team met to propose a temporary, 45-day placement change to the treatment program to collect new behavior data. The BIP included two target behaviors: aggression and noncompliant behaviors. The proposed IEP provided the following special education services and transportation, which divided into the two following periods:
Services 02/09/2024–02/20/2024

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Social/Emotional	Special Education Teacher	Special Education Teacher	30 Minutes/5 Times Weekly	Special Education
Social/Emotional	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	75 Minutes/5 Times Weekly	Special Education
Behavior	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	60 Minutes/Weekly	Special Education

Services 02/21/2024–04/30/2024

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Social/Emotional	Special Education Teacher	Special Education Teacher	30 Minutes/5 Times Weekly	Special Education
Social/Emotional	Certified Behavior Technician or	Special Education Teacher	660 Minutes/Weekly	Special Education

	Registered Behavior Technician			
Behavior	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	660 Minutes/Weekly	Special Education

Supplemental Aids and Services: 02/09/24–02/20/24

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
1:1 Support	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	1085 Minutes/Weekly	Special Education
1:1 Support	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	600 Minutes/Weekly	Special Education
Occupational Therapy Consultation	Occupational Therapist	Occupational Therapist	20 Minutes/Yearly	Special Education
Behavior Consultation	Behavior Specialist	Special Education Teacher	480 Minutes/Monthly	Special Education
1:1 Support	1:1 Paraprofessional	Special Education Teacher	45 Minutes/5 Times Weekly	Special Education

02/21/202 –04/30/24

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
1:1 Support	Certified Behavior Technician or Registered Behavior Technician	Special Education Teacher	1095 Minutes/Weekly	Special Education
Occupational Therapy Consultation	Occupational Therapist	Occupational Therapist	20 Minutes/Yearly	Special Education
Behavior Consultation	Behavior Specialist	Special Education Teacher	480 Minutes/Monthly	Special Education
1:1 Support	1:1 Paraprofessional	Special Education Teacher	45 Minutes/5 Times Weekly	Special Education

The IEP's least restrictive environment description of the public day school (treatment program) stated the following:

The end date for the above placement at a public day school is calculated with reference to the implementation date of this IEP and is intended to encompass implementation for 45 school days. If the parent does not allow the student to attend and participate in a public day school placement as of the implementation date of the IEP, the end date of this placement will be delayed until the parent allows implementation of this stage of the IEP for 45 school days. This setting will remain the District's offer of FAPE until the parent has allowed the student to attend and participate in this setting for 45 school days.

33. The prior written notice stated that the "team agreed to a 45-day evaluative placement in a Therapeutic Day School (treatment program)." In addition, the notice stated the District proposed the following:

- Replacing all social/emotional and behavior goals
- New BIP based on the FBA
- More testing accommodations added
- An "evaluative placement" at a therapeutic day treatment program
- Reducing OT consultation minutes
- Implementing an ERP

The notice indicated that the Parents disagreed with the proposed placement and the implementation of the ERP. According to the District, the initial start date at the treatment program was scheduled for February 28, 2024.

34. On February 9 and 12, 2024, the Student's special education teacher (teacher) and Parents exchanged emails regarding the February 6, 2024 IEP meeting. The teacher asked if there were any concerns and the Parents responded that "many items were changed or deleted without talking to us first." On February 14, 2024, the Parents requested an IEP meeting "to go over inconsistencies and concerns with the accommodations on the draft IEP I was sent."

35. On February 13, 2024, the District conducted a third MDR meeting due to a disciplinary removal for hitting and kicking staff. The MDR found a direct relationship between the Student's behavior and disability. The MDR stated the BIP was implemented as written and school protocol was followed.

36. On the same day, the Parents signed the release of information for the treatment program.

37. On February 20, 2024, the director and Parents exchanged emails about scheduling a visit to the treatment program.

38. On February 26, 2024, the team met to review the Parents' concerns about the Student's IEP. The team discussed ten potential accommodations, including, in part, daily communication, headphones, modeling behaviors, and daily reinforcements. The team determined that some of the proposed accommodations were either redundant or not appropriate. The notice also stated that academic services would be addressed in the evaluation and if needed, services would be provided.

39. On March 6, 2024, the Parents emailed the director, stating they approved placing the Student at the treatment program for 45 days.
40. On March 7, 2024, the treatment program emailed the Parents, requesting a meeting before the Student started to make sure it had all the necessary information so the Student could start at the treatment program on March 11, 2024. If the treatment program did not receive the paperwork from the Parents by March 12, 2024, the next date the Student could begin to attend was April 8, 2024. The Parents did not provide the necessary paperwork for the Student to begin attending.
41. March 7, 2024 was the last day the Student attended the District elementary school.
42. On March 8, 2024, the Parents filed for a due process hearing regarding placement at the treatment program, among other issues, and invoked stay-put at the District elementary school. On the same day, the District also filed for a due process to place the Student in a 45-day interim alternative educational setting (treatment program).
43. On March 10, 2024, the director emailed the Parents, stating that the treatment program was the Student's "interim alternative educational setting while the due process hearings are pending is [treatment program]..." The Complainant emailed the District's legal counsel, stating that the District did not have permission to "communicate with my client regarding issues which are currently under dispute, this includes your client's assertion that somehow it has decided that the student is an interim alternative setting even though my client has invoked stay-put..."
44. On March 27, 2024, the private psychologist completed the report regarding the evaluation of the Student. The next day, the school psychologist acknowledged the receipt of the report to the Parents and proposed rescheduling the eligibility meeting until everyone could review the report.
45. On March 29, 2024, the due process hearing decision regarding the stay-put placement was rendered, stating that the stay-put placement was the treatment program for up to 45 days from the date the Student begins attending the treatment program despite the Parents' arguments that the placement was considered an interim alternative educational setting and the District allowed the Student to attend the District elementary school after the February IEP meeting for the Parents to complete the paperwork.
46. On April 2, 2024, the Parents withdrew their due process hearing request and on April 8, 2024, the Student began attending the treatment program. On the same day, the District proposed meeting after the Student's 45-day placement, according to a prior written notice.
47. From April 12 to 25, 2024, the Complainant and District's legal counsel exchanged emails regarding scheduling the evaluation review meeting and debated whether the evaluation by the private psychologist was an IEE. The Complainant stated that the evaluation extension ran to March 31, 2024, and there was no discussion about using data from the 45-day stay put

placement as part of the evaluation. The District's legal counsel responded that the District was still waiting for a response from the Parents to schedule the evaluation meeting. The legal counsel stated, in part, "While the interest in expediency is appreciated, the District cannot complete an appropriate evaluation without the data from [treatment program] that the team has previously determined is necessary to make decisions regarding the student's placement, and will need to schedule the evaluation meeting accordingly..."

The Complainant responded that the Parents would be filing a complaint regarding the delay in the evaluation.

48. On April 16, 2024, the special education teacher emailed the Parents a prior written notice, dated April 8, 2024, watermarked "Draft." The notice stated, "On April 2, 2024, [Complainant] notified [District] of the [Parents'] decision to send [Student] to [treatment program] for a 45-day evaluative placement in accordance with his IEP." The District proposed that the Student's IEP team meet after the placement had been completed. The notice also stated, in part, "The IEE will not affect [Student's] current (2/6/2024) IEP or BIP at this time."
49. Regarding the April 8, 2024 prior written notice, the Complainant stated she would have "never used the term 'evaluative placement.'" And the Complainant stated that the District continued to reference the evaluation as an IEE, which was not the case.
50. On April 19, 2024, the school psychologist emailed the Parents about scheduling the evaluation meeting by June 10, 2024.
51. On April 23, 2024, the team held a meeting with the treatment program to discuss the private psychologist's report.
52. On April 25, 2024, the school psychologist emailed the Parents, stating that after the review of the private psychologist's report, which had concerns about the Student's communication, the District was requesting to evaluate this area. The "Reevaluation Notification/Consent" that incorporated the prior written notice appeared to accompany the proposal for the communication evaluation. Communication was added to the existing list of areas that were being evaluated. The Complainant claimed that recycling essentially the same consent form as the December 19, 2023 consent form was an attempt to circumvent the 35-day timeline to evaluate.
53. On May 3, 2024, this complaint was filed with OSPI.
54. On May 30, 2024, the evaluation group met to discuss the evaluation results that included the information provided by the private psychologist and input from the District elementary school and the treatment program.
55. The documentation showed that the Student had been restrained 17 times from September 22, 2023 to March 1, 2024.

56. The Complainant stated the Parents had documentation of the days the Student did not receive the services of an RBT/certified behavior technician (CBT) based on the Student's schedule. The documentation of missed days or having a substitute was as follows:
- September 1: Substitute
 - September 4: No CBT
 - September 15: No CBT
 - September 19: No CBT
 - September 20: No CBT
 - September 21: Substitute
 - September 22: Substitute
 - September 29: No CBT
 - October 9-13: No CBT
 - October 16-18: No CBT
57. The District acknowledged that RBT/CBT services were sometimes not provided to the Student. At the beginning of the 2023–24 school year, the District contracted with a behavior agency to provide services, but the contract was terminated because of communication problems and a lack of follow through, according to the District. The District stated paraeducators were used to implement the services and there was no noticeable difference in the Student's behavior when paraeducators were used.
58. According to the Student's attendance record, the Student was absent from school 54 days during the school year. The record also showed the Student missed 22 days of school due to disciplinary removals.

CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged the District failed to implement the behavior services in the Student's IEP. A district is required to implement the special education services in conformity with the IEP. The failure to implement must be a material violation, representing more than a minor discrepancy between the services provided and the services in the IEP. The District denied there was a material violation.

The Student's May 2023 IEP was implemented at the start of the 2023–24 school year. According to the Student's IEP, the RBT was responsible for providing specially designed instruction in the area of social/emotional for 120 minutes each week in the general education classroom and 240 minutes, five times a week in the special education classroom. The District contracted with an outside agency for an RBT to provide services to the Student at the beginning of the school year. However, the District eventually needed to terminate the contract of the behavior specialist that resulted in the Student missing the services from the behavior specialist for 13 days from September 4 to October 18, 2023, not counting the days a substitute was provided and days the Student was absent.

The District acknowledged that the behavior specialist's services were not provided at times but stated they used 1:1 paraeducators to step in and support the Student. However, since the IEP reflected the Student's need for a behavior specialist and not just paraeducators, using paraeducators was not sufficient to meet the needs of the Student. The Student missed approximately 24 hours of RBT services, which represents a material violation of the IEP. OSPI finds a violation. The District is required to meet the Parents and develop a plan that provides at least 24 hours of compensatory education services.

Issue Two: Evaluation Timeline – The complaint alleged the District failed to follow the evaluation timeline when the District conducted a reevaluation of the Student. A district is required to evaluate a student within thirty-five school of consent.

Here, the District proposed evaluating the Student in October 2023. On December 18, 2023, the District received the Parents' consent to the evaluation. Because of difficulties scheduling the evaluation and deciding who was going to conduct the evaluation, the District proposed and the Parents' agreed to an evaluation extension to March 31, 2024. Additionally, after the difficulty and behavior challenges showed by the Student, the District had proposed placing the Student in the treatment program for 45 days and that they would use the data gathered as part of the Student's evaluation, like any placement the Student was in. The District proposed temporarily placing the Student at the treatment program for 45 days as part of the evaluation, with an initial start date of February 28, 2024.

The Parents disagreed with the proposed placement change, but on March 6, 2024, the Parents agreed to the placement at the treatment program. However, on March 7, 2024, the Parents filed a due process hearing regarding the proposed placement, along with other issues, and invoked stay-put at the District elementary school. On the same day, the District also filed for a due process to place the Student in a 45-day interim alternative educational setting—the treatment program. Then, on March 29, 2024, the due process hearing decision regarding the stay-put placement was rendered, stating that the stay-put placement was the treatment program for up to 45 days from the date the Student begins attending the treatment program. On April 7, 2024, the Student began attending the treatment program. On May 30, 2024, the evaluation had been completed and the evaluation team met with the Parents to discuss the findings.

OSPI finds that all the arguments about the nature of the evaluative placement and the interim alternative education setting at the treatment program were essentially moot when the due process decision determined that the Student's current placement, according to the last agreed upon IEP, was the 45-day placement in the treatment facility, despite the Parents and the Complainant's disagreement. Since the treatment program was declared the current placement, it was reasonable to have the Student evaluated in the Student's current placement.

Given the District's allegations regarding the Parents's delays and the Complainant's claim that the District attempted to circumvent the 35-day timeline, OSPI must determine when the 35-day evaluation timeline reasonably began. The District proposed changing the Student's placement for a limited time to evaluate the Student in the context of the treatment program. Although the District confused the issue by calling it an evaluative placement, which the complaint argued that the Parents did not consent to, OSPI finds it reasonable that the District sought to wait until the Student was attending the treatment program before starting the 35-day timeline and evaluating the Student. This was reasonable because the then-current placement in the elementary school was not working and the District wanted to see how the Student performed in a more structured environment before possibly placing the Student for a longer period of time.¹ Thus, even though

¹ OSPI notes the argument regarding whether the private psychologist's evaluation was an IEE also confused the issue and may have contributed to delays. In this case, it was unclear from the record that the Parents

there were delays following when the Parents' signed consent, these delays were ultimately necessary to work through in order for the District to conduct an evaluation that would truly determine the Student's needs.

Therefore, it was acceptable that the 35-day evaluation timeline began when the Student began attending the treatment program. The 45-day stay-put placement began on April 8, 2024, when the Student began attending the treatment program. The 35-day timeline to evaluate and meet was May 28, 2024. A violation is found. Although the time the complaint was filed on May 3, 2024, the evaluation timeline had not ended, the District exceeded the 35-day timeline. Since it was only two days, there was no discernible impact on the Student.

Issue Three: Consent – The complaint alleged the District failed to get the Parents' consent to the evaluative placement at the treatment program. A district must provide prior written notice to parents that describes all the evaluation procedures the district intends to conduct. Then the district must obtain the parent's consent to conduct the evaluation.

Here, the District's December 2023 prior written notice proposed the evaluation included the following areas to evaluate: medical-physical, adaptive, academic, occupational therapy, social/emotional/behavior, and cognitive, along with an FBA, student observation, and review of existing data. The notice did not mention an evaluative placement. On December 18, 2023, the District received the Parents' consent.

In February 2024, the District proposed using the treatment program as an evaluative placement as part of the evaluation but did not specifically seek the Parents' consent for the evaluative placement as part of the evaluation. As discussed above, the evaluation did not begin and the placement was not initiated until after the due process hearing declared that the treatment program was the Student's placement for 45 days. Once the due process hearing decision declared the treatment program was stay-put, there was no need for the Parents' consent for an evaluative placement. There was just the placement at the treatment program and the District then had permission to evaluate the Student. Based on the treatment program being the last agreed upon placement, no violation is found.

Issue Four: Prior Written Notice – The complaint alleged the District did not provide a correct prior written notice to the Parents. The complaint stated the April 8, 2024 prior written notice was inaccurate. A district is required to provide the parent with a prior written notice that documents any proposal or rejection to initiate or change the identification, evaluation, or educational placement of the Student.

On April 2, 2024, the Parent withdrew their petition for a due process hearing and the Student was scheduled to begin attending the treatment program. The District sent the Parents prior

indeed requested an IEE since the District agreed to have the private psychologist conduct the evaluation, in part, in order to get the Parent's consent. Although the District later claimed it was IEE, this contradicts the District's previous argument that the Parents had no right to an IEE until the District had an opportunity to evaluate the Student.

written notice, indicating that the Complainant had notified the District of their decision to send the Student to “[treatment program] for a 45-day evaluative placement in accordance with his IEP.” The email also referred to the evaluation as an “IEE.” The Complainant noted that there was no agreement to call the placement at the treatment program an evaluative placement or the evaluation an IEE. While the references to an evaluative placement and IEE were confusing, the portion of the notice stating the Student would be attending the treatment program and that the District was conducting an evaluation were accurate. Overall, the prior written notice was substantially accurate; however, OSPI strongly recommends the District document the Complainant and Parents’ disagreement with the terminology in the Student’s file with this prior written notice. No violation was found.

CORRECTIVE ACTIONS

By or before **September 10, 2024, September 20, 2024, September 27, 2024, and January 10, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 13, 2024**, the District and Parent will develop a schedule for 24 hours of compensatory education services in the areas that were served by the RBT.

Unless otherwise agreed to by the District and Parent, services will be provided by an RBT. 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. The District will provide OSPI with documentation of the schedule for services by or before **September 20, 2024**.

If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours’ notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **December 20, 2024**. The District must provide OSPI with documentation that includes the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **January 10, 2025**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District’s privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 10, 2025**.

DISTRICT SPECIFIC:

Written Guidance

By **September 20, 2024**, the District will ensure that the Student’s evaluation team receive written guidance for evaluation timelines specific to this complaint.

By **September 10, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will provide feedback as necessary. OSPI must approve the written guidance.

By **September 27, 2024**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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.

RECOMMENDATION

OSPI recommends the District clarify in prior written notice whether the evaluation conducted by the private psychologist was an IEE or a District evaluation.

Dated this 2nd day of July, 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.)