

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-97

PROCEDURAL HISTORY

On June 20, 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 Ferndale 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 June 20, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On June 24, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On July 5, 2024, the District requested an extension to submit its response. That request was granted the same day.

On July 12 and 15, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2024. OSPI invited the Parent to reply.

On July 17, 2024, OSPI received additional information from the District. OSPI forwarded the additional to the Parent on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 21, 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. Since June 21, 2023, per WAC 392-172A-03095, have all required members of the individualized education program (IEP) team been informed of IEP meetings and been allowed to attend IEP meetings?
2. Since June 21, 2023, has the District followed special education discipline regulations?

LEGAL STANDARDS

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying

them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100.

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

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

Educational Services During Suspensions: A school district may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements. WAC 392-400-610.

FINDINGS OF FACT: BACKGROUND

1. On October 20, 2022, the Student's IEP team met. The Student was eligible for special education services under the category of specific learning disability. The IEP provided the Student with specially designed instruction (SDI) from February 27, 2023 until February 26, 2024, provided by a special education teacher, in a special education setting as follows:
 - Reading: 40 minutes/2 times weekly
 - Writing: 40 minutes/2 times monthly

The Student received 1,840 minutes per week of building instructional time with 110 minutes per week served in the special education setting. The percent of time in a general education setting was 94.02%.

2. On June 8, 2023, the Student's IEP team met to amend the Student's IEP. The IEP included SDI, provided by a special education teacher, in a special education setting from September 18, 2023 until February 26, 2024, as follows:

- Reading: 45 minutes/2 times weekly
- Writing: 40 minutes/2 times monthly
- Math: 45 minutes/5 times weekly

The Student received 1,840 minutes per week of building instructional time with 335 minutes per week served in the special education setting. The percent of time in a general education setting was 81.79%.

3. August 30, 2023 was the first day of the 2023–24 school year. The Student was a seventh grader at a District middle school, and the Student’s October 2022 IEP, amended in June 2023, was in effect.
4. On February 22, 2024, the Student’s IEP team met to amend the Student’s IEP. The IEP provided SDI from September 26, 2024 until February 24, 2025, as follows:
 - Math: 45 minutes/5 times weekly (by a special education teacher in a special education setting)
 - Reading: 40 minutes/3 times weekly (by a general education teacher/paraeducator in a general education setting)
 - Writing: 40 minutes/3 times weekly (by a general education teacher/paraeducator in a general education setting)

The Student received 1,840 minutes per week of building instructional time with 225 minutes per week served in the special education setting. The percent of time in a general education setting was 87.77%.

The IEP provided the following supplementary aids and services:

- Additional Adult Support: 45 minutes/1 time monthly (by a Behavioral Specialist Consultation in a general education setting)

FINDINGS OF FACT: ISSUE 1 (IEP MEETINGS)

5. A prior written notice (PWN) ,dated June 8, 2023, stated, in part:
 - The IEP team was scheduled to meet on Friday, May 19th at 3:00 PM. This meeting was rescheduled due to team member availability.
 - The IEP team was scheduled to meet on June 1st, 2023 at 3:00 PM. This meeting was rescheduled due to team member illness.
 - The IEP team was scheduled to meet on June 8th, 2023 at 3:00 PM. This meeting was rescheduled per parent request.
 - The IEP team was scheduled to meet on August 28, 2023 at 3:00 PM. This meeting was rescheduled per parent request.
 - The IEP team met on September 13, but it was unable to finalize the IEP.
 - The team met again on October 18 parents requested a continuation of the meeting which was rescheduled for November 14.
 - The November 14 meeting did not happen due to the district's cancellation related to concern for staff.
 - The meeting was rescheduled to November 21 and cancelled by parent due to not feeling well.

- The rescheduled meeting for December 11 was held to finalize the IEP and FBA, parents were not in attendance due to refusal to meet with staff zoom participation being an option.

The IEP team has struggled to have successful meetings due to Parent's inability to comply with meeting norms and expectations.

Parent's conduct has left staff members feeling harassed and intimidated. As a result, Parent was informed on 11/20/23 that staff would be permitted to attend future IEP meetings via Zoom if they determined it was necessary for their wellbeing. Parent has repeatedly refused to meet in this format, claiming that having a staff member join the meeting via Zoom denies the right to parental participation. The District has informed Parent that staff participation via Zoom is a successful and regularly employed meeting method. Because Parent has made it clear she is refusing to meet under the meeting structure the District is using, the District determined it had an obligation to go forward with the IEP meeting on December 11 in order to ensure [Student] has appropriate programming. The IEP team is willing to reconvene in the event Parent wishes to meet and is willing to participate with staff having the option of joining via Zoom.

6. A September 28, 2023 PWN stated, "The team (including Parent) met on 9/13/2023 at...District office...It was determined at the close of the 3 hour meeting, upon insistence of the parent, to schedule a continuation of the meeting, keeping the IEP open for continued discussion."
7. On September 29, 2023, the District emailed the Parent, in part, as follows:
In response to your request to receive clarity on the established district communication procedures, including all three schools that your children now attend, I am attaching the updated communication safeguards. These have been reviewed by our attorney and provide for the most up to date procedures for communication, meetings, and involvement.

A letter, dated September 29, 2023, stated, in part:

IEP Team Meetings: Parent participation in IEP meetings is of course an essential component to best processes. Your options for IEP Team meetings include the following:

- In person meetings at the district office at pre-arranged times...Team members will participate in person, but retain the option to participate via zoom if they feel it necessary.
- Meetings with team via zoom or via phone.

8. On November 20, 2023, the Parent emailed the District:
The parents are united in the position that the use of a Zoom technology call for either of our students in place of an in-person meeting where all members are in physical attendance is absolutely inappropriate for the individualized educational needs of our students under IDEA. The parents are unable to participate in a Zoom call, and will not be able to participate fully in a call that uses Zoom technology. A Zoom call is not an in-person IEP meeting. We have requested all members attend in person IEP meetings at the district office, and we have done so for many years. We value the privacy of an in-person only meeting and our rights under FERPA and IDEA and wish to exercise those right therein extended to us; and we have been very clear for many years in writing to the district that this technology is never to be used regarding our students IEP meetings. They continue to bully with the

threat of holding a Zoom conference call and withholding an in-person only meeting which does not employ Zoom.

9. On November 21, 2023, the District sent the Parent an email that stated, in part, "...As previously stated, the District will not require team members to attend in person. Attached is a copy of the IDEA's Procedural Safeguards. The Procedural Safeguards identify a number of options in the event you believe your or [Student's] rights under the IDEA are being violated."

The Parent responded, in part:

I did have to call the police due to (District) staff...physically assaulting my son...I am aware that same staff member whom was reported for allowing physical assault in the classroom is likely refusing to attend the IEP meeting in-person...I am writing to request an in-person IEP meeting...with all members seated at the conference table and without the use of Zoom, to hopefully finish his IEP document without the use of Zoom technology which is not appropriate for this student's educational needs nor the parent's participation.

10. On February 20, 2024, the District sent the Parent a final invitation to the February 22, 2024 IEP meeting. The invitation stated, in part, "We look forward to seeing you at the upcoming meeting at the district office in Conference Room B. We will have members both in person and joining via zoom."

11. A March 4, 2024 PWN stated, in part:

The IEP team meeting for the annual review was scheduled for 2/22, with first notification to parents being sent on 1/12/24 and multiple reminders in various forms between 1/12/24 and 2/22/24. The meeting took place on 2/22/24 for the annual review of the IEP, parents were not in attendance due to refusal to meet with staff zoom participation being an option.

The IEP team has struggled to have successful meetings due to parent inability to comply with meeting norms and expectations. The parents' conduct has left staff members feeling harassed and intimidated. As a result, parent was informed on 11/20/23 that staff would be permitted to attend future IEP meetings via Zoom if they determined it was necessary for their wellbeing. The parents have repeatedly refused to meet in this format, claiming that having a staff member join the meeting via Zoom denies the right to parental participation. The District has informed the parents that participation via Zoom is a successful and regularly employed meeting method. Because the parents have made it clear they're refusing to meet under the meeting structure the District is using, the District determined it had an obligation to go forward with the IEP meeting for the annual review in order to ensure [Student] has appropriate programming. The IEP team is willing to reconvene in the event parent wishes to meet and is willing to participate with staff having the option of joining via Zoom.

12. On June 20, 2024, the Parent filed a complaint with OSPI that alleged, in part, "My IEP meeting was cancelled in an illegal act of retaliation."

13. On July 12 and 15, 2024, the District submitted its response. Regarding the first issue, the response stated, in part:

There is nothing in the IDEA that prevents school districts from holding IEP meetings virtually or in a hybrid of in-person and virtual. Unified Sch. Dist. #299, 124 LRP 13914 (KS SEA 2024) In Unified School District, a parent was prohibited from entering the school building where his child's IEP meeting occurred. As a result, the District held a hybrid IEP meeting with some participants attending in person and others participating via Zoom. The administrative law judge rejected the parents' claim that this meeting format violated their rights.

14. On June 24, 2024, the Parent sent an email to OSPI that stated, in part:

...one point of clarification regarding the substance of my complaint to which my statements hinge. The district has only extended *Zoom* calls to the parents, they state these are 'in-person' meetings; which they are not, they are extending a *Zoom* call and requiring the use of *Zoom*...*Zoom* is not a safe technology, and is not appropriate for our students individual needs under IDEA. We have extended our written objections to the district many times...The parents believe *Zoom* is being weaponized to exclude the team's participation an ability to review documents; thereby not allowing a team meeting appropriate for the student and team.

The parents have written the district that...'Zoom technology to mute and record the meeting (nor telephone) which would violate the families rights under FERPA, WAC RCW9.73.039 as well as IDEA/504 [is not appropriate]. The family believes the district is currently in violation of section 504 ...' And further that 'the district does not have consent for using *Zoom* technology regarding [my] students IEP meetings from the [my] family. [Forcing the family to use a *Zoom* call against their repeated objection] and refusing a meeting that includes the parents [because the district demands use of *Zoom* in order for me to participate] (and team)'...The district's insistence that putting me mute on a *Zoom* call is extension of an 'in-person' meeting is a way is for them to exclude the parents and child from an actual IEP meeting/s.

CONCLUSION: ISSUE 1

In the present case, the Parent filed a complaint, alleging, in part, "The district has only extended *Zoom* calls to the parents, they state these are 'in-person' meetings; which they are not...' the district does not have consent for using *Zoom* technology regarding [my] students IEP meetings from the [my] family'."

A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student.

The applicable regulations for IEP meetings do not state that IEP meetings must be in person, and thus, a meeting conducted using *Zoom* is an acceptable alternative to having an in-person IEP meeting, as long as the parent is afforded an opportunity to participate. The Parent alleged *Zoom*'s mute feature has been used "to exclude the parents and child from an actual IEP

meeting/s.” The present case’s record does not establish this allegation. Additionally, the Parent was invited to attend IEP meetings in-person at District offices where some of the District’s staff were also attending the meetings in-person, while other District staff could choose to attend those meetings in-person or on Zoom. The Parent was provided the opportunity to meet in person, which addressed their request to be in-person and mitigated the concern about potentially being muted on Zoom. This is reasonable under the present case’s circumstances, and thus, OSPI does not find a violation as the first issue.

FINDINGS OF FACT: ISSUE 2 (DISCIPLINARY REGULATIONS)

15. On November 8, 2023, the Student received a one-day out of school suspension.
16. The Student received one-day in-school suspensions on the following four days: November 13, 2023, January 25, May 24, and June 14, 2024.
17. On June 20, 2024, the Parent filed a complaint with OSPI that alleged, in part:
Student was denied instruction in excess of 10 days this year through repeated use of in-school suspensions based on disability without interventions in place because there was no IEP meeting held with the parents and they never received an invite to an in-person IEP meeting to resolve the situation. No supplemental instruction has been offered.
18. On July 12 and 15, 2024, the District submitted its response. Regarding the second issue, the response stated, in part:
In this matter, Student received a single one-day out of school suspension and three one-day in school suspensions over the course of the 2023-2024 school year.¹ These suspensions did not trigger the District’s obligation to conduct an MDR². Parent’s claim that the District failed to follow special education discipline regulations has no merit.
19. On July 17, 2024, the District emailed OSPI as follows, “I am confirming that the District provided Student with SDI during his suspensions, except for his in-school suspension on June 14, 2024. The SDI was available that day, but Parent came to school and withdrew him before it could be delivered.”

CONCLUSION: ISSUE 2

In the present case, the Parent filed a complaint, alleging, in part:

[Student] was denied instruction in excess of 10 days this year through repeated use of ISS based on disability without interventions in place because there was no IEP meeting held with the parents and they never received an invite to an in-person IEP meeting to resolve the situation. No supplemental instruction has been offered. His removal to the office is unacceptable.

¹ OSPI notes the District’s attendance records show the Student received a one-day out of school suspension and *four* one-day in-school suspensions during the 2023–24 school year.

² MDR stands for “manifest determination review”.

A school district may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements.

The case's record shows that the Student received a one-day out of school suspension, and also received four in-school one-day suspensions. The Student's placement was not changed via discipline and therefore, the District was not required to hold a manifestation determination review. The District was, as noted above, required to provide educational services to the Student. The District informed OSPI that it provided educational services on four of these five days of suspension days. Based on this fact, the District did not material fail to implement the Student's SDI during the Student's suspensions, and as such, OSPI finds no violation as to the second issue.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 16 day of August, 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.)