

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-98**

### **PROCEDURAL HISTORY**

On July 3, 2024, the Office of Superintendent of Public Instruction (OSPI) received an unsigned special education community complaint from the parents (Parents) of a student (Student) in the Northshore School District (District), and the signed complaint was received on July 9, 2024.

On July 9, 2024, OSPI opened a special education community complaint investigation. The Parents alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On July 9, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 10, 2024, and asked the District to respond to the allegations made in the complaint by July 26, 2024.

On July 11, 2024, OSPI received documentation from the Parents and forwarded a copy of the documents to the District on July 12, 2024.

On July 25, 2024, the District requested a one-week extension of time to respond to the complaint. OSPI respond the same day, approving an extension to August 1, 2024.

On August 1, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on August 2, 2024. OSPI invited the Parent to reply by August 15, 2024.

On August 15, 2024, OSPI received the Parents' reply. OSPI forwarded that reply to the District on the same day.

On August 27, 2024, the complaint investigator consulted with the OSPI assistant director, special education dispute resolution.

OSPI considered all information provided by the Parents 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 July 10, 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. Did the District address the Parent's concerns about the Student in the following areas during the 2023–24 school year according to WAC 392-172A-03110:
  - Mental health counseling
  - Dyslexia

- Sensory integration
  - Attendance?
2. Did the District discuss placement options during the December 2023 IEP meeting according to WAC 392-172A-02060?
  3. Did the District implement the special education services in conformity with the Student's individualized education program (IEP) while attending the nonpublic agency (NPS) according to WAC 392-172A-03105?

## **LEGAL STANDARDS**

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

IEP 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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Reasonable Delays in Implementation: Reasonable delays in implementing an IEP while a school district conducts assessments and negotiates with parents are not material. *See J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1189 (W.D. Wash. 2002) (finding that implementation delay that occurred at "behest of the parents...was reasonable and was not...error"); *cf. Tracy N. v. Haw. Dep't of Educ.*, 715 F. Supp. 2d 1093, 1112 (D. Haw. 2010) (finding that delay in determining student's educational placement was reasonable because there were "ongoing discussions regarding placement in response to [the student's mother's] concerns, a reassessment of [the student's] cognitive and academic skills, and a reevaluation of [her] behavior").

IEP Amendment/Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or

parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Development: The parents of a student with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their student. This is an active role in which the parents (1) provide critical information regarding the strengths of their student and express their concerns for enhancing the education of their student; (2) participate in discussions about the student's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the student will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the student and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

## **FINDINGS OF FACT**

### **Background Information**

1. The Student was a third grader who was eligible for special education services under the category of autism and her annual individualized education program (IEP) was developed on February 15, 2023. The IEP included annual goals in social/emotional (self-advocacy, peer perspective), behavior (task initiation, time management), and written language (conventions, organization), with motor as a relative service (ball skills, writing), and progress to be reported quarterly. The Student's February 15, 2023 IEP provided the Student with the following specially designed instruction (SDI) in a *special education setting*:

- Social/emotional: 30 minutes per week (to be provided by special education staff)
- Motor: 160 minutes per month (to be provided by special education staff)

The Student's February 15, 2023 IEP provided the Student with the following SDI in a *general education setting*:

- Behavior: 30 minutes per week (to be provided by special education staff)
- Written language: 60 minutes per week (to be provided by special education staff)

The Student's placement was determined to be 95.91% of the time in a general education setting.

2. On June 23, 2023, the Parents emailed District staff, sharing about their exploration of alternative educational programs around the region, including a District partnership program and an independent PreK–12 school in the community. The Parents indicated that the staff may have received a reference form from one of the programs.
3. On July 10, 2023, the school principal responded to the Parent’s email of July 5, 2023, requesting the Student “be moved into the 4-5 split hi-cap class...this year?” The principal’s response included information regarding the “4-5 split hi-cap” class, as well as information about a 3–4 combination class. The principal requested the Parents give her “until mid-August to check and finalize some things” and indicated some concerns that should be discussed prior to deciding.
4. On August 10 and 16, 2023, the Parents emailed different District staff, including the principal, indicating that the Student was “looking forward to returning to the school,” and that they would be working with the principal on class placement and IEP supports.
5. On August 29, 2023, the Parents emailed the Student’s teacher, introducing themselves, and providing information the Student wanted to share. The Parents also requested an update to the Student’s IEP accommodations and provided input as to additional supports they thought may be helpful.

#### **2023–24 School Year**

6. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, was in the fourth grade, attended a District elementary school, and her February 2023 IEP was in effect.
7. The District’s 2023–24 school year began on September 6, 2024.
8. On September 6, 2023, the special education teacher emailed the Parents to share that she met with the general education teacher and other staff to discuss the Student’s accommodations. In addition, she indicated she was looking forward to working with the Student in a social/emotional group focusing on anxiety. The special education teacher also shared that she was “unable to add your concerns to the IEP,” though an IEP meeting could be scheduled if the Parents were interested in meeting now, rather than waiting until January 2024.
9. On September 14, 2023, the special education teacher emailed the Parents that an IEP meeting could be scheduled for September 22, 2023, and to let her know if that was convenient for them. Ultimately, the IEP meeting was scheduled for September 27, 2023.
10. On September 15, 2023, the Parent emailed school staff that the Student would not be in attendance that day due to “feeling burnt out, physically and mentally, and is dysregulated.”

11. On September 18, 2023, the District sent the Parents a meeting notice regarding the IEP meeting scheduled for September 27, 2023. The Parents' response indicated they could attend.
12. On September 21, 2023, the assistant principal emailed the Parents about the morning check-in with the Student when they arrive, and shared that the Student said she is always late, and the assistant principal suggested the use of a sticker chart to track when she arrived on time. The Student further requested the assistant principal check back in a month.
13. On September 25, 2023, the special education teacher emailed the Parents, reiterating that the accommodations would be reviewed at the upcoming IEP meeting and confirming if the Parents were wanting to wait until January 2024, to review the full IEP. The special education teacher stated that "some of the new accommodations would lead to new goal areas so it might make sense to review the IEP sooner than January." Attached to the email for the Parents were the Student's current IEP and previous progress reports, as the Parents specifically requested a copy of the June 2023 progress report.
14. On September 26, 2023, the Parents sent the District a copy of a letter from the Student's outside psychologist who helped develop the suggested accommodations to be discussed the next day. The Parents also indicated an advocate would attend the meeting.
15. Following the IEP meeting on September 27, 2023, the District provided the Parents with a prior written notice (PWN), describing the decisions made at the IEP meeting. The team considered these possible accommodations for the Student: speech-to-text, shortened school day, and direct SDI for sensory integration difficulties. All three proposed accommodations were rejected, and the District provided reasons as to why each was rejected. The IEP team also agreed to meet again on October 11, 2023, to review any potential changes to the Student's IEP.
16. The District provided the Parents with a meeting notice on September 27, 2023, for the agreed upon IEP meeting scheduled for October 11, 2023. The Parent response indicated they could attend.
17. On September 29, 2023, the Parents emailed the special education teacher and school counselor for assistance in supporting the Student returning to school, as she missed three days of school that week. It was suggested to the Parents that the Student begin the school day checking in with the special education teacher and that the Student be introduced to the District's mental health specialist. The Parents were open to meeting the mental health specialist, though declined the check-in opportunity for the Student at the beginning of the day with the special education teacher. Email communications reflect that the Parents contacted the school on the days the Student was dysregulated and not able to attend school. There were multiple emails during the month of September.
18. On October 11, 2023, the IEP team, including the Parents, met and added accommodations to the Student's IEP, in response to the Parents' concerns regarding the Student's increased

anxiety and dysregulation. The team considered reports from outside service providers as a part of the discussion. Some of the accommodations added to the Student's IEP included access to technology support to complete written assignments, advanced notice regarding notable changes to routine (e.g., fire drills, schedule changes), copy of class notes/outlines, Student use of visual sign to quietly indicate a needed break, and access to talking books/books on tape.

The IEP included annual goals in social/emotional (self-advocacy, peer perspective), behavior (task initiation, time management), and written language (conventions, organization), with motor as a related service (ball skills, writing) and progress to be reported quarterly. The Student's October 11, 2023 IEP provided the Student with the following SDI in a *special education setting*:

- Social/emotional: 30 minutes per week (to be provided by special education staff)
- Behavior: 70 minutes per week (to be provided by special education staff)
- Motor (related service): 160 minutes per month (to be provided by special education staff)

The Student's October 11, 2023 IEP provided the Student with the following SDI in a *general education setting*:

- Behavior: 30 minutes per week (to be provided by special education staff)
- Written language: 60 minutes per week (to be provided by special education staff)

The Student's placement was determined to be 91.81% of the time in a general education setting.

19. The Student did not attend school the next day, October 12, 2023, and the Parents sent an email to the IEP team, containing their concerns regarding the IEP meeting the previous day. Specifically, they stated that a free appropriate public education (FAPE) was not being provided to the Student and requested use of a scribe as an accommodation, as well as increased service minutes.
20. On October 13, 2023, the District met with the Parents to address concerns raised during the previous meeting and to discuss initiating a reevaluation of the Student. The Parents requested mental health services and compensatory services during the meeting, which the District denied.
21. On October 16, 2023, the District provided a PWN to the Parents, describing decisions and actions taken during the October 13, 2023 meeting. Specifically, the Parents requested compensatory services in reading, math and writing, and the District denied the request, as reading and math are currently not areas of SDI for the Student, and written language services had been provided to the Student per the current IEP. The Parents' request for mental health services was also rejected as previous evaluation team had not recommended mental health as an area of required service. The team discussed the need to reevaluate the Student in reading and math to determine if SDI is warranted.

22. In response to the Parents' request regarding the scope of the proposed reevaluation, on October 16, 2023, the District provided the Parents with a reevaluation plan that included the following areas to be addressed: review of existing data (including information from outside therapists), general education teacher report, behavior, academic, motor, Student observation, medical-physical, social/emotional, cognitive, communication. The Parents provided consent for the reevaluation on October 24, 2023.
23. Through early November 2023, the family's private mental health provider and the school counselor and District mental health specialist coordinated a meeting between them to address strategies to support the Student. The outside mental health provider offered to begin a discussion with the family at their next meeting. The group met on November 6 and 9, 2023, to develop an "exposure plan," which would be shared with school staff and expectations communicated with the Student.
24. On November 12, 2023, the Parents signed consent for the District mental health specialist to meet with the Student. The Student continue to have difficulty attending school through November 2023.
25. On November 13, 2023, the Parents spoke with the District's mental health specialist and agreed to connect her with the Student's private therapist to support collaboration. It was subsequently clarified that the District's specialist did not provide weekly therapy with students who have outside therapists to avoid conflicts with therapy strategies or goals. The private therapist was supportive of the Parents participating in this collaboration.
26. The Student's reevaluation team met with the Parents on November 17, 2023, to discuss eligibility and share the reevaluation results. The District provided the Parents with the meeting notice on October 12, 2023, with the Parents responding on October 24, 2023, they could attend.
27. On December 1, 2023, the Parents provided the District information from the family mental health therapist regarding successful integration into the school environment for the Student, as well as a letter from the therapist. Additional correspondence on December 1, 2023, from the Parents to the District, spoke to ongoing efforts to develop a successful reintegration plan for the Student.
28. On December 4, 2023, the Parents emailed the District mental health specialist about the upcoming meeting that day with the Student and the desire of the Parent to meet the specialist as well. The ongoing schedule was for the mental health specialist to meet with the Student on Mondays. There were additional email communications between the Parents and District, confirming specifics of the plan.
29. On December 4, 2023, the District provided the Parents a PWN regarding the reevaluation meeting. The team proposed to continue the Student's eligibility for special education services under the autism category, noting that the Student demonstrated adverse educational impact and the need for SDI. The team agreed to add communication as a related service and add

reading and math as areas of SDI. The team agreed to continue services for the Student in the areas of social/emotional, behavior, written language, and fine motor as a related service. The PWN included information that the Student has "family mental health supports, and District mental health specialist and school counselor will collaborate to assist the Student in the school setting."

30. Following the reevaluation meeting, the District began efforts to schedule an IEP meeting with the Parents. Initial discussions focused on scheduling the IEP on December 11, 2023, though the special education teacher suggested convening the meeting in January 2024, to give her time to assess the Student in math to develop more appropriate goals. On December 6, 2023, the Parents emailed the special education teacher, stating their preference to keep the December 11, 2023 IEP meeting, and suggested that the December 2023 IEP meeting be to "talk through the Student's math evaluation and other goals and then save the January 2024 IEP meeting to set math goals as needed." The Parents also requested that the school psychologist attend the meeting to provide information from the reevaluation in math and her recommendations for SDI.
31. On December 7, 2023, the Parents provided signatures and indicated their dissent regarding the Student's reevaluation report and both the signature and dissent statement were uploaded to the reevaluation document. The District contacted the Parents to offer to include the "error analysis" in the reevaluation document or have it reflected in the Student's IEP present levels of performance section. The Parents responded on December 12, 2023, requesting that the "error analysis" be added to the reevaluation. The District made the changes, and a copy was sent to the Parents the same day.
32. On December 11, 2023, the IEP team, including the Parents, met to develop a new IEP for the Student. The IEP included annual goals in social/emotional (self-advocacy, self-identify emotions), behavior (transitioning, self-regulation), written language (organization, production), reading (fluency, decoding), math (word problems, fact family fluency), motor as a relative service (ball skills, keyboarding), and communication as a related service (empathy), with progress to be reported quarterly. The Student's February 15, 2023 IEP provided the Student with the following SDI in a *special education setting*:
  - Social/emotional: 30 minutes per week (to be provided by special education staff)
  - Behavior: 70 minutes per week (to be provided by special education staff)
  - Written language: 30 minutes per week (to be provided by special education staff)
  - Reading: 45 minutes per week (to be provided by special education staff)
  - Math: 30 minutes per week (to be provided by special education staff)
  - Motor: 160 minutes per month (to be provided by special education staff)
  - Communication: 30 minutes per week (to be provided by special education staff)

The Student's December 11, 2023 IEP provided the Student with the following SDI in a *general education setting*:

- Behavior: 60 minutes per week (to be provided by special education staff)
- Written language: 30 minutes per week (to be provided by special education staff)

A sensory consult was included as a supplementary aid/service for 40 minutes per month, for the Student and a board-certified behavior analyst (BCBA) consult was added for school personnel support for three hours per month for three months.

The Student's placement was determined to be 83.92% of the time in a general education setting.

33. The Parents were provided a PWN, following the IEP meeting of December 11, 2023. The PWN stated that additional math and reading service minutes were requested by the Parent, beyond the 30 minutes per week for math and 45 minutes per week for reading. The request was rejected as the Student's attendance issues due to anxiety continued. The District indicated it would gather data to determine whether the Student would need more support minutes. If necessary, the IEP would be amended.
34. Student attendance data from December 2023, indicated the Student was not able to attend school, though staff members were available to provide support to assist reengagement. The special education teacher was available to meet the Student at the beginning of the school day and in the early afternoon. After the winter break in January 2024, the Student continued to experience dysregulation, making attendance at school difficult. The Parents emailed the school regarding these absences.
35. On January 17, 2024, the Parents emailed a director of special education for input regarding the Student's difficulty attending school. The Parents shared that the reintegration plan was not successful, despite the "best efforts" of the team, and that the plan was not sufficiently predictable. The Parents requested the special education director schedule a phone call with them to discuss placement options.
36. The director responded on January 18, 2024, that "any discussion of placement change" would be something that the IEP team needs to discuss as a group and offered that the District's BCBA connect with the family for further support. The Parents responded that same evening that they "needed to email the team to reschedule the date for the IEP meeting" for both Parents to attend "where we can have this discussion around placement together." The email also stated that the reengagement schedule was updated to reflect the service minutes per the IEP developed in December 2023, though it had not been successful.
37. A meeting notice was sent to the Parents on January 19, 2024, with the purpose of the meeting to "determine placement and discuss [a nonpublic agency] NPA." The Parents responded that the same day they could attend.
38. The Parents and the IEP team met on January 26, 2024, and reviewed the concerns. The Parents requested placement at an NPA for the Student rather than to remain at a District school. The District proposed that a diagnostic placement be considered at a smaller school to "determine whether a change in physical setting to a smaller environment would increase Student attendance." The District did not agree with the Parents' proposal to place the Student at an NPA with solely 1:1 academic instruction. The PWN provided to the Parents following the IEP

meeting indicated that the Parent requested the IEP meeting to discuss an NPA placement and that the Parents suggested two placements that offered a 1:1 tutoring model. The District proposed a diagnostic placement that had both individual and small group instruction. The team rejected the option of keeping the Student at elementary school, as the multiple reengagement plans that were developed were not successful and the Student was not able to regulate herself enough to attend school. The District rejected one of the 1:1 tutoring centers the Parents proposed based on experience with the program, though agreed to check out the other center. The Parents agreed to research the diagnostic placement program.

39. The Parents emailed the District on February 5, 2024, that they contacted the diagnostic placement program but did not believe it was appropriate for the Student and requested that the District contact the tutoring center program to enroll the Student.
40. On February 8, 2024, the Parents emailed the District with a different program proposal for the Student and requested that the District contact another NPA for a diagnostic placement. They believed that this program would meet the concerns of the District in that it offered small group instruction, social skills and peer interaction, and would meet the Student's needs.
41. The Parents toured the program on March 7, 2024, and the District moved forward with placement procedures with the NPA proposed by the Parents. The Student began attending the NPA on March 25, 2024.
42. The Student's IEP was amended on April 3, 2024, to align with the placement at the NPA. The Parents had agreed to proceed with the amendment without reconvening the IEP team. The amended IEP included annual goals in social/emotional (self-advocacy, self-identify emotions), behavior (transitioning, self-regulation), written language (organization, production), reading (fluency, decoding), math (word problems, fact family fluency), motor as a related service (ball skills, keyboarding), and communication as a related service (providing empathy), with progress to be reported quarterly. The Student's April 4, 2024 IEP provided the Student with the following SDI in a *special education setting*:
  - Social/emotional: 290 minutes per week (to be provided by special education staff)
  - Behavior: 290 minutes per week (to be provided by special education staff)
  - Written language: 150 minutes per week (to be provided by special education staff)
  - Reading: 200 minutes per week (to be provided by special education staff)
  - Math: 200 minutes per week (to be provided by special education staff)
  - Motor: 160 minutes per month (to be provided by special education staff)
  - Communication: 30 minutes per week (to be provided by special education staff)

Sensory consult was included as a supplementary aid/service for 40 minutes per month, and BCBA support for school personnel was continued for three hours per month for three months.

The Student's placement was determined to be 0% of the time in a general education setting.

The IEP stated that the Student was attending an NPA day school for 20 hours per week for a six-week diagnostic placement and that there are no general education students at the NPA.

43. On April 4, 2024, the District provided the Parents a PWN, outlining the IEP team's decision to place the Student for a six-week diagnostic placement at an NPA for 20 hours per week, and that the team would meet to discuss the Student's progress and ongoing placement. The IEP team also agreed to discuss an independent vision evaluation at the next meeting, following the six-week placement of the Student.
44. The Parents were provided with a meeting notice on May 22, 2024, regarding a meeting to discuss the placement of the Student and the Parents responded they could attend on May 31, 2024. The meeting would include a discussion of assessment revision followed by an IEP meeting. The Parents had previously provided consent electronically on May 16, 2024.
45. On May 31, 2024, the team met to discuss the assessment revision results based on a review of data from previous evaluations, as well as information provided by the Student's current teachers at the NPA. The Student was also observed at the NPA. The team determined the Student continued to meet eligibility under the category of autism and needed services in social/emotional, behavior, math, reading, written language, communication (related service), and motor (related service), with supplementary support for sensory consult. The team also considered accommodation recommendations for vision.
46. The IEP team met as part of the May 31, 2024 meeting to amend the Student's IEP. Information regarding the Student's vision was added to the IEP, with recommendations suggested to support the Student at school. The May 31, 2024 amended IEP included annual goals in social/emotional (self-advocacy, self-identify emotions), behavior (transitioning, self-regulation), written language (organization, production), reading (fluency, decoding), math (word problems, fact family fluency), motor as a related service (ball skills, keyboarding), and communication as a related service (providing empathy), with progress to be reported quarterly. The Student's May 31, 2024 IEP provided the Student with the following SDI in a *special education setting*:
- Social/emotional: 300 minutes per week (to be provided by special education staff)
  - Behavior: 300 minutes per week (to be provided by special education staff)
  - Written language: 200 minutes per week (to be provided by special education staff)
  - Reading: 200 minutes per week (to be provided by special education staff)
  - Math: 200 minutes per week (to be provided by special education staff)
  - Motor: 160 minutes per month (to be provided by special education staff)
  - Communication: 30 minutes per week (to be provided by special education staff)

A sensory consult was included as a supplementary aid/service for 40 minutes per month.

The Student's placement was determined to be 0% of the time in a general education setting.

An extended school year (ESY) plan was developed for the Student during the IEP meeting with services required in social/emotional, behavior, written language, math, and reading. Services would be provided four hours per day, four days per week at the NPA.

47. The PWN provided the Parents on May 31, 2024, outlined the decision to continue the Student's placement at the NPA due to positive engagement and attendance, as well as progress on goals. It was noted that the NPA could not provide communication or motor

services, so the District proposed those services occur at the Student's elementary school or via Zoom. The Parents requested that those services be provided at the NPA, and the District declined the request, offering the services at the elementary school or via Zoom. The team also considered ESY services, though the Parents rejected those services for summer 2024. BCBA services were considered and rejected as the NPA did not observe a need for the services.

## **CONCLUSIONS**

**Issue 1: Parent Concerns** – The Parents alleged that the District did not address their concerns about the Student regarding mental health, dyslexia, sensory integration, and attendance during the 2023–24 school year.

When developing an IEP for a student, the IEP must consider the concerns of parents and address information provided by the parent to allow them the opportunity to participate in meetings regarding the identification, evaluation, and placement of the student.

In this case, looking back one year from the filing of the complaint, the District and Parents' documents indicate the Parents participated in six IEP meetings, three reevaluation meetings (reevaluation planning, results, assessment revision results), and at least five additional meetings with different District staff to address concerns. Documentation also highlights extensive email communications between the Parents and District, discussing concerns related to the Student's mental health, the need for reading and attendance support, and sensory integration. The email exchanges offered suggestions, strategies, meetings to discuss the concerns, or provided information regarding next steps.

Regarding mental health counseling and attendance concerns, at the beginning of the school year, the assistant principal and special education teacher each initiated check-ins with the Student upon the Student's arrival at school. The Student was also a member of a social/emotional group focusing on dealing with anxiety facilitated by the special education teacher. In November 2023, the family's mental health therapist, the school's counselor, and the District's mental health specialist began collaborating to develop a reintegration plan to support the Student attending school, with the family's therapist also providing input as to appropriate accommodations to include in the Student's IEP.

In addition, early in the school year, the Parents shared their concerns regarding additional accommodations they felt should be added to the Student's IEP to support dysregulation and anxiety. The Parents also provided accommodation recommendations suggested by an outside provider that were discussed by the team, culminating in an amended IEP that included accommodations to support the Student in these areas. The small social group that the special education teacher facilitated was also a part of the services the Student received to address her behavior and social/emotional goals.

The Parents' concerns regarding reading were addressed through a comprehensive reevaluation process, with discussion regarding reevaluation occurring on October 13, 2023. The Parents had the opportunity for input into the evaluation plan, which resulted in a new IEP with additional SDI

services in reading and math, as well as sensory consult support. Goals in behavior and social/emotional remained in the Student's IEP.

Throughout the school year, the District addressed the Parents' concerns related to mental health counseling, dyslexia/reading, sensory integration and attendance, through the addition of accommodations, reevaluation processes to better identify the Student's need for SDI, a collaboratively developed and supported reintegration plan to support attendance, and ultimately the decision for a placement at an NPA (discussed further below). While it is clear the Student struggled with attendance and this was undoubtedly a challenging situation, the District followed special education processes and was diligent in its efforts to collaborate with the family, respond to concerns, and address the Student's needs. Therefore, OSPI finds no violation.

**Issue 2: Placement Options** – The Parents alleged that the District did not discuss placement options during the December 2023 IEP meeting.

A student's placement must be determined at least annually by a team, including parents, who are knowledgeable about the student, with the decision based on the IEP, the requirements regarding least restrictive environment, and one that provides a strong probability the student will be successful in achieving their goals.

In this case, the Student's IEP team and Parents participated in an IEP meeting on December 11, 2023, to discuss the recent reevaluation results. The team had proposed to continue the Student's eligibility for special education services under the autism category, as the Student demonstrated adverse educational impact and the need for SDI. The team agreed to add communication as a related service and added reading and math as areas of SDI. Services for the Student would continue in the areas of social/emotional, behavior, written language, and motor as a related service. Specifically, service minutes were increased in behavior; the new goal areas of reading, math and communication included 30 minutes of service per week in math and 45 minutes per week in reading; and 30 minutes per week in communication services were added. The service minutes for written language remained the same (60 minutes per week), though the service would be provided half of the time in a special education setting. Placement was determined to be 83% of the time in general education, which was a decrease from the October 2023 IEP, where placement was determined to be 91% of the time in general education.

The PWN provided to the Parents, following the IEP meeting, stated that additional math and reading service minutes (beyond the 30 minutes per week for math and 45 minutes per week for reading) were requested by the Parents and rejected by the District due to concerns regarding the Student's anxiety issues. The PWN further stated that the District would gather data to determine whether the Student would need more support in reading or math.

The above demonstrates that placement for the Student was discussed and determined at the December 2023 IEP meeting. Following this, in January 2024, the Parents emailed the District and requested the District discuss alternative placement options for the Student. Subsequently, the Student's IEP team considered the request for alternative placements and explored a diagnostic placement, ultimately placing the Student at the NPA.

Therefore, OSPI finds the District and IEP team properly determined the Student's placement and addressed requests to change the Student's placement to an NPA. OSPI finds no violation.

**Issue 3: Special Education Services** – The Parents alleged that the District did not provide services in conformity with the Student's IEP while attending the NPA.

When a district does not implement an IEP exactly as prescribed, the district does not violate the IDEA unless it is shown to have materially failed to implement the student's IEP. Reasonable delays in implementing an IEP while a school district conducts assessments and negotiates with parents are not necessarily material.

In this case, the District met with the Parents on January 26, 2024, following their request of January 17, 2024, to discuss placement options for the Student. Once a potential placement was collectively agreed upon, the District initiated a diagnostic placement with the NPA to assess if the Student would be successful in the placement. The NPA did not provide motor or communication services as part of their service options, which was shared with the Parents. Documents indicate that at the IEP meeting on May 31, 2024, to formally determine the Student's placement at the NPA, the District reiterated that the NPA did not provide motor or communication services onsite and offered the Parents the services at the Student's elementary school, where the Student had been receiving the services during the school year previously, or via Zoom. The Student's school schedule at the NPA was less than 6.5 hours per day, so there was availability in the Student's schedule for the services at the elementary school or via Zoom. The Parents declined both of those options.

OSPI finds that the District offered and made available through multiple avenues motor and communication services, and the Parents declined to have the Student access the services. Thus, OSPI finds no violation.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this 5th day of September 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.)