

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-146

PROCEDURAL HISTORY

On December 1, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Tacoma 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 December 2, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint. With the December 2, 2022 letter, OSPI identified three separate issues for investigation (Issues 1–3).

On December 5, 2022, OSPI received additional information from the Parent. In response, the wording of Issue 1 was amended. On December 7, 2022, the District was provided a copy of the additional information from the District, as well as the new wording for Issue 1.

Separately on December 5, 2022, OSPI received additional information from the District. In response, the wording of Issue 3 was amended. On December 7, 2022, the Parent was provided a summary of the additional information from the District, as well as the new wording for Issue 3.

On December 8, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On December 13, 2022, OSPI received additional information from the Parent. In response, the wording of Issue 2 was amended and Issue 3 was dropped from the investigation. On December 14, 2022, the District was provided a copy of the additional information from the Parent, as well as the new wording for Issue 2.¹

On December 29, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on January 3, 2023. OSPI invited the Parent to reply.

On January 24, 2023, OSPI's investigator conducted a Microsoft Teams interview of the Student's 2022–2023 general education teacher.

¹ The Parent's complaint request included an allegation that improper procedures were followed in that the Student was systematically receiving services from a behavior modification specialist and that such an intervention was not in the Student's IEP, and that the Parent had never been a party to an IEP development conversation regarding whether such an intervention needed to be added to the Student's IEP. Issue 3 read, in part, "Since April 2021, has the District followed proper IEP development and consent procedures, specifically, has the District provided behavior modification specialist services in a systemic manner and said services were not listed on the Student's IEP?" Based on additional information provided by the Parent, including on December 13, 2022, wherein the Parent clarified her allegations, Issue 3 was removed as a matter to be investigated.

On January 25, 2023, OSPI's investigator requested a written statement from a speech language pathologist (SLP) that worked with the Student. The District provided OSPI with this statement on January 26, 2023. OSPI forwarded a copy of that statement to the Parent on January 26, 2023.

On January 25, 2023, OSPI's investigator conducted a Microsoft Teams interview of the Student's 2022–2023 special education teacher.

OSPI considered the 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 December 2, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Whether the District properly implemented the accommodations, modifications, and support for school personnel in the Student's individualized education program (IEP) beginning December 2, 2021 and continuing through the present?
2. Whether the District followed proper special education discipline procedures beginning December 2, 2021 and continuing through the present?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 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).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging

behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

Response to Intervention and Referral Timelines: While the Office of Special Education Programs (OSEP) "supports state and local implementation of response-to-intervention (RTI) strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner...the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability." OSEP states that "the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction." *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011); *see also Memorandum to State Directors of Special Education*, 67 IDELR 272 (OSEP 2016).

FINDINGS OF FACT

2020–2021 School Year

1. The Student was eligible for special education services under the category of autism. A new annual IEP for the Student was created on April 1, 2021. The April 2021 included, in part, the following accommodations: visual schedule/communication book; adults will give student verbal prompting and tactile clues; give short, concise directions; large print on picture schedule; pictorial schedule and behavior chart; pictorial social stories; repeat/paraphrase/clarify/simplify directions; and visual modeling of behavior.

The April 2021 IEP included, in part, the following annual goals:

- Speech Language 1: "When given a variety of visual and verbal prompts, Student will demonstrate reciprocal language via low-tech (PECS) and/or verbal exchanges."
- Speech Language 2: "When given a variety of visual and verbal prompts, Student will initiate verbal greetings and farewells."
- Speech Language 3: "When given a variety of visual and verbal prompts, Student will make verbal requests for wants and needs."
- Speech Language 4: "When given a variety of visual and verbal prompts, Student will respond to 'Yes/No' questions in structured settings."
- Speech Language 5: "When given a variety of visual and verbal prompts, Student will respond to 'wh' questions (what, who, where, when, why)."

The April 2021 IEP does not mention providing the Student with access to a sensory room for emotional regulation. The April 2021 IEP did not include any modifications or supports for school personnel.

2021–2022 School Year

2. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of autism, was in the first grade, attended a District elementary school, and the Student’s April 2021 IEP was in effect.
3. During this investigation, the Parent provided the following information concerning her allegations:

‘Whether the Student was educated in the proper least restrictive environment’...is NOT a concern I want the District to respond to. My complaints are: (1) failure to implement [the Student’s] IEP; (2) failure to provide prior written notice of determinations to discipline; and, (3) failure to acquire parental consent to subject[ing] Student to discipline.

...

The accommodations and modifications she requires in order to demonstrate behavior that is cohesive with school behavioral expectations...are not, and have never been, offered to Student.

Student requires adaptive communication [such as] oral cueing...redirection...tactile demonstrations, repetition, visual prompting, pictures and text...picturized communication aids (picture of someone cleaning up, labeled with concise directions which read, ‘time to clean up’), picturized schedule where [an instructor] can point to an image that represents music class, labeled ‘music class’ [and] picturized behavioral charts, labeled with large font that addresses each behavior that is ill-suited for [the] classroom environment.^[2]

...

It has been reported to me that a communication system that includes token-boards and first/if/then and choice boards are in place. However, their use [is] clearly ineffective since reports about Student’s behavior are not positive.

...

On October 22, 2022, I [had a conversation with the] behavior modification specialist [and she] stated [Student’s service providers did not utilize] communication aids [in working with her].

...

[When Student demonstrates behavior outside of that expected by the school], she is redirected, to be isolated (with her one-on-one), away from her classmates, out of the classroom, to ‘walk-it-off’, for an undocumented period of time and frequency, as punishment...I have reason to believe Student is redirected from her classes and directed to sensory rooms – I express my desire that I was not consenting to the use of sensory rooms when she is [at the school]...I have reason to believe Student is isolated from her classmates [during lunch] and eats [with just] her one-to-one [paraeducator]...I am alleging proper disciplinary procedures were not followed when Student was made the subject of

² On or about December 8, 2022, in additional information provided to OSPI, the Parent specifically mentioned, in part, the following IEP accommodations: visual schedule; communication book; behavior chart; large print on picture schedule; visual modeling of behavior; break material into manageable parts; pictorial social stories; adults will give Student verbal prompting and tactile clues; give short, concise directions; and repeat/paraphrase/clarify/simplify directions.

disciplinary proceedings [as a result of her communication accommodations not being implemented].

(emphasis in original).

4. The District's response included a progress report related to the April 2021 IEP, dated December 6, 2021. It showed, in part, the following progress on the speech language goals: sufficient progress on goals 1–3³ and emerging skill on goals 4–5.
5. A new annual IEP for the Student was created on January 26, 2022. The January 2022 IEP included the same communication-related accommodations as those in the April 2021 IEP.

The January 2022 IEP included, in part, the following annual goals:

- Speech Language 1: "When given visual supports, Student will expand her sentences to include information regarding who, what, or where, improving her verbal responses to 'WH' questions from 0% - 30% accuracy to 75% accuracy."
- Speech Language 2: "When given visual or verbal supports, Student will verbally respond to verbal questions or comments from others improving her reciprocal consecutive verbal exchanges."

The January 2022 IEP did not include any modifications or supports for school personnel. It also did not provide the Student with access to sensory rooms for emotional regulation.

The January 2022 IEP read, in part:

Team Considerations...Student's educational plan incorporates low-tech options to enhance her communication needs such as picture exchange communication system (PECS)...A pictorial 'first/then' schedule is used to assist Student in transitions between activities. A behavior chart is used to help Student understand the expectation of herself during a school day.

...

Social/Emotional/Behavioral: Student has difficulty accepting an adult directions when it different from her wants and desires. She may yell or cry 'no', 'mine', 'stop' or repeat the adult's directions. She will drop to the ground and lay her body on the floor. During these outbursts she may grab and firmly squeeze onto the adult with her and repeatedly bang her head against the adult's body. If she is near a peer during an outburst, she may hit them in the upper body or firmly squeeze their arm. With 1-to-1 para support, Student has been making progress with these outbursts since the beginning of the year. At the beginning of school these outbursts would occur several times a day. Currently, she may have 1 outburst a day.

...

³ The full entry for Speech Language 1 read, "Student is improving her social language interactions. When provided with verbal questions or comments, with visual supports nearby if needed, her consecutive reciprocal verbal exchanges range from 0/5 to 5/5 given no prompting. Student produced 2/5 to 3/5 consecutive responses on average with zero prompting during recent therapy sessions, ranging from no response (appearing to be distracted at the moment) to 5/5 consecutive responses when focusing on the therapy activity 'game.'"

Communication: ...Student currently responds to greetings...usually after the person repeated their greeting to her 2-3 times...She recently initiated expressing her personal feelings during a frustrated moment by circling the written word 'mad' and saying 'mad.'...Visual and verbal reminders are provided at the start of sessions...When provided with a visual-verbal cue (ex., green 'yes'/red 'no' cards, written words 'yes/no', holding out each hand one at a time or modeling thumbs up/down and saying 'yes or now?'), Student recently pointed to the visual support and said 'Yes' or 'No'...Student recently responded to 'WH' questions during structured therapy activities given picture supports and verbal questions.

6. A March 3, 2022 progress reporting showed the Student made sufficient progress on both speech language 1 and 2. (The entry for speech language 1 mentioned, in part, Student utilizing "sticker scenes.")
7. A June 10, 2022 progress reporting showed the Student made sufficient progress on both speech language 1 and 2. (The entry for speech language 1 mentioned, in part, Student being presented "'WH' questions regarding pictures.")

2022–2023 School Year

8. At the start of the 2022–2023 school year, the Student continued to be eligible for special education services, was in the second grade, attended a District elementary school, and the Student's January 2022 IEP was in effect.
9. According to the speech language pathologist (SLP) service log, the SLP worked with the Student on five occasions in September 2022. Multiple entries for September 2022 mention the Student utilizing a "core board." And in October 2022, the SLP worked with the Student on five occasions. October 2022 entries note, in part, the Student being provided with the following: "visual prompting"; "visual speech schedule"; "choice board"; "white board"; and "visuals of adjectives board."
10. A parent-teacher conference for the Student took place on October 13, 2022. Subsequently on October 19, 2022⁴, the Parent emailed District staff her notes regarding the conference. Those notes, read, in part:

School was not able to provide any evidence that communication presented to Student was in line with communication strategies put forth in Student's IEP...Parent requested to see ANY (a single piece) of communication to Student that is in accordance [with] her IEP, [such as] directions [are] repeated, paraphrased, and simplified, that directions are communicated with visual modeling of behavior, that directions are communicated with prompting and tactile cueing and that directions are communicated in a short concise manner.

Later that day, the special education teacher responded, writing, in part, "I do not agree...we [were] not able to provide evidence of breaking apart classroom tasks [and] we use multiple

⁴ On October 19, 2022.

methods of communication with Student. Also, teacher was given an IEP-at-a-glance [at] the beginning of the year. Her accommodations are being followed.”

11. On October 19, 2022, the Parent emailed District staff, stating, in part:

I am declining the request to reevaluate Student...There is concern Student is subjected to isolation from course work for a substantial period of her day, during the times when course work and activities are only available in video or discussion form and modifications of content and material are not available and provided to her.

...

Student is not being purposefully defiant when she is not interested in finishing up in order to prepare to leave the cafeteria, leave the playground, leave the library, or leave the classroom at dismissal. More than likely, Student is not comprehending verbal instructions.

...

I will be...inquir[ing] [as to] who [should have] prepare[d] and create[d] an expectation list, in large print, with concise directions that would [help with Student’s] communication [needs].

12. According to the SLP service log, the SLP and Student did not work together in either November or December 2022. According to the SLP service log, this was due, in part, to the Student being absent, the SLP being out sick, a snow day, and a holiday.

13. On November 8, 2022, the Parent emailed the executive director, stating, in part:

Visual aids with text, picture routines and picture schemes with concise directions in text is a communication aid and is a service already specified as being needed in Student's Accommodation Plan...Right now, Student is underserved in that she, really, receives none of those cueing, prompting and commands, which puts her at an even further disadvantage.

Later that day, the executive director responded to an email from the Parent, wherein the Parent had articulated various concerns. The executive director’s email read, in part:

The creation of visual aids is a team effort often led by the communication service providers (SLP/SLPA/Case manager). [District] has a number of communication specialists within the district. I will follow up to this with the current SLP, and their leads to ensure that our team is developing visual supports, and providing additional training to those that interact with Student throughout her day.

...

Material preparation is from both her general education teacher and her case manager...Our team would be happy to assist in guiding this conversation during the meeting to establish a plan for appropriate access through materials and modes.

14. In an email to the executive director, dated November 21, 2022, the Parent again expressed her concern “that none of Student’s classes had any communication aids (or seem to know that was a requirement for Student.”

15. On November 22, 2022, the executive director emailed the Parent, stating, in part:

I was able to confirm that the team has a variety of visual supports for Student. These include schedules, choice pictures, a token board and a mini whiteboard used for first/then

directions. I will check in with the team after their break to ensure that these are being utilized in each setting.

In her email, the executive director also explained that the behavior modification specialist provided "assistance to the Student's 1:1 paraeducator and teacher" on the "use of visual support[s], schedules, [and a] token board."

16. A December 5, 2022 progress reporting showed the Student made sufficient progress on both speech language 1 and 2. (The entry for speech language 1 mentioned, in part, Student utilizing "visual supports including visuals, whiteboard, marker, written directions, and sentence scripts.")

17. The District's response read, in part:

On December 5, 2022, Parent informed the District that she wanted to withdraw/revoke/rescind consent authorizing the District to provide special education services to Student.

On December 8, 2022, the executive director acknowledged the District's receipt of Parent's request to revoke services for Student. The executive director stated that the District believed Student needed the services and supports in her IEP to access her education...On December 26, 2022, Parent confirmed that she was revoking consent for special education services for Student.

18. In an email, dated December 26, 2022, the Parent stated, in part:

In order to support Student's transition [to a school environment with no special education services], I will send her to school with her picturized communication book. I will reach out to the building principal and request permission be granted [for me] to prepare Student's workspace with reminder visual aids...I will [also] request a copy of Students' revised schedule so that I can prepare a picturized schedule scheme for her.

19. On January 24, 2024, OSPI's investigator conducted an interview of the Student's 2022–2023 general education teacher. The teacher worked with the Student from September through late October 2022, and then again in mid-January 2022. The Student was typically pulled out of general education about 90 minutes per day. Regarding the sensory room, the teacher provided:

Sensory Room

The Student became emotionally dysregulated on a fairly regular basis.

During the Student's kindergarten year, the Parent said the Student was not allowed to use the sensory room, so general education teacher and the associated paraeducator did not permit the Student to utilize the sensory room at the direction of the school principal.

'Since COVID, we do not really have the sensory room up and running – pre-COVID we had a volunteer, a paraeducator, or a counselor that was there to watch and a staff member

would escort a student to the sensory room. Today, maybe only one other different, self-contained classroom still uses the sensory room.’⁵

‘I’m in the classroom, so I don’t know what happens when she leaves the classroom, but Student would ask for a walk or a drink of water and the paraeducator would go with her. But often Student would request to continue walking or occasionally disrupt other classes. Now when she becomes emotionally dysregulated, because there are no special education services, I direct her to the office.’ (It was OSPI’s investigator’s impression, from the interview, that a District staff person would come to the classroom and escort the Student to the office.)

Regarding the communication-related accommodations, the teacher provided detailed information about how the different accommodations were provided and noted that a variety of communication supports were used. For example:

Visual Schedules: ‘We use this pictorial social stories in every single classroom she goes to. One is located right behind her desk, which she can manipulate herself. And then there is a small one on the wall and her paraeducator has another one.’

Communication Books: ‘Our communication book was just a binder of all the different picture cues that we could utilize for the calendar and/or present to Student.’

Large Print on Picture Schedules: ‘Some of the picture schedules have print. Some do not. We would use the whiteboard.’

Behavior Charts: The special education teacher was the staff person principally responsible for implementation of this communication-related accommodation. The behavior chart was supposed to get a checkmark if she was on-task, etc.

‘It’s a piece of paper that’s printed out every day and the paraeducator would have it on the clipboard she carried and fill it out and turn it into special education staff every day. It became a huge data tracking tool.’

Pictorial Social Stories: The District created some of these, but the Parent did not want District to use the ones it created. So, Parent created some of the picture social stories the District utilizes.

The 2022–2023 general education teacher reported: Student will respond to ‘listen’, ‘whisper’, and ‘sit’ – but those are the only cards she easily engages with.

Other

The 2022–2023 general education teacher reports she used, in part, first/then cards and white boards with the Student – to aid in communication.

20. On January 25, 2024, OSPI’s investigator conducted an interview of the Student’s 2022–2023 special education teacher. OSPI’s investigator’s notes from that interview are as follows:
Sensory Room

⁵ Single parentheses denotes paraphrasing, an approximation of what the 2022–2023 general education teacher said during the interview with OSPI’s investigator.

'To my knowledge, the sensory room was never used with the Student. And I've worked with the Student since beginning of first grade – so last school year. And, at that time, Parent made it very clear that Student was to not to use the sensory room. I made it clear to any education support professionals that I worked with that the sensory room was not to be used with the Student.'

Communication-Related Accommodations

Visual Schedules, Large Print on Picture Schedules, and Pictorial Schedules: 'Yes, Student has a visual schedule on her desk that was set up by the SLP. It has Velcro that you could attach pictures to – of different activities and the pictures would have the word to match the picture.'

'The visual schedules were not used during the breakout sessions with myself but my time with the Student each day was on the Student's schedule on the desk.'

Communication Books: 'This was basically that: the Student and anyone working with the Student had access to pictures beyond just visuals of scheduling. They had access to pictures regarding food, emotions, etc.'

'It was a binder with Velcro strips and would change based on what the Student and staff were working on, created by SLP. It could be carried around. Student's 1:1 paraeducator might bring communication pieces to group for the Student, but the special education teacher also had some she used with many of her students.'

Behavior Charts: 'We actually used a really simple one. It was given to us by the District's behavior specialist. It had boxes for stars and options for 'safe body' or 'following directions' and the end of the behavior chart would have a preferred activity.'

Pictorial Social Stories: 'Our SLP made some really short pictorial social stories – such as pictures of expected behaviors in the classroom: 'we sit in the chair and have safe hands.' I also did social stories for her in the small group – and the small group would work together on exploring the meaning of the social story.'

21. On January 26, 2024, the District provided OSPI with a written statement in response to a question about using accommodations and the use of a sensory room from one of the SLPs that worked with the Student during the relevant time period. That statement read as follows:

During the time this Student was on my caseload, she was provided a customizable daily visual schedule created with Board Maker. This schedule was created in collaboration with the 1:1 [paraeducator], [special education] teacher, and general education teacher in order to best support this Student during her day at school. Print-sized was deemed adequate by the team. Based on check-ins with the team, it was my understanding that the Student was not yet implementing the schedule independently and the 1:1 paraeducator was modeling the use of the schedule by implementing first/then and removing the activity to a 'finished' section upon completion.

The Student had access to a Core Board and other visuals that we would use to facilitate and augment verbal language. She greatly benefited from the use of these visuals during speech therapy. Parent requested we also implement use of a white board to accommodate verbal directions given and supporting the student in choice making.

Beyond First/then boards and prompts to support transitions I did not implement behavior charts.

This Student was using pictorial social stories in [*special education setting*] small groups. In addition to this, the team (including the parent) requested functional phrases to assist during behaviors. I provided the team with phrases to support and augment communication during dysregulation. These phrases included: 'I am frustrated': 'I need a break, 'I keep my hands to myself,' and with visuals of behavior expectations when she is frustrated.

...The elementary school does have a sensory room, it is unstaffed and students are required to be with an adult while in the room. It was my understanding that parent did not want the Student to have access to have access to the sensory room for emotional regulation. I do not recall anytime that Student was provided access.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not follow proper procedures for implementing the Student's communication-related accommodations.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

The Student's IEPs provided the Student with the following communication-related accommodations: "visual schedules"; "communication books"; "large print on picture schedules"; "pictorial schedules"; "behavior charts"; and "pictorial social stories." And both the April 2021 and January 2022 IEPs provided the Student with 30 minutes 2 times a week of specially designed instruction in speech/language, with goals that necessitated, in part, providing the Student with certain communication-related visual supports.

The documentation, here, shows the various communication-related accommodations were materially implemented during the relevant period. For example, in part:

- The SLP's service log for the 2022–2023 school year detailed the fact the SLP regularly worked with the Student in September and October 2022. Entries in the SLP's service log specifically mention the following communication-related accommodations being provided to the Student: a "core board", "visual prompting", "visual speech schedule", "choice board", "white board", and "visuals of adjectives board";
- Multiple contemporaneous emails were authored by District staff, including, at least in part, on October 13, November 8, and November 22, 2022, wherein they refute the Parent's allegation that communication-related accommodations are not being provided to the Student;
- During this investigation, one of the Student's SLPs, the 2022–2023 general education teacher, and the 2022–2023 special education teacher were each able to provide detailed statements showing their respective implementation of the Student's communication-related accommodations; and,
- Progress reporting on those goals that involved use of communication-related supports shows the Student, generally, made progress on the same. For example: progress reporting dated December

6, 2021 noted the Student had made sufficient progress on Speech Language 1–3, and progress at the level of “emerging skill” for Speech Language 4–5; March and June 2022 progress reporting showed the Student made “sufficient progress” on both Speech Language 1 and 2 during the 2021–2022 school year⁶; and December 2022 progress reporting showed the Student made “sufficient progress” on both the following goals in the January 2022 IEP: Speech Language 1 and 2.

For the foregoing reasons, OSPI finds the District materially implemented the communication-related accommodations in the Student’s IEP, and OSPI does not find a violation.

OSPI does note, though, there may have been some confusion regarding the Parent’s expectations in relation to a certain behavior tracking sheet, such as what needed to be recorded and how often this information needed to be provided to the Parent. If the Parent were to reengage with the special education process in the future, OSPI encourages the Student’s IEP team to clarify the expectations surrounding the referenced behavior tracking sheet.

Issue 2: Discipline Procedures – The Parent alleged the Student’s IEPs did not provide the Student with access to a sensory room; but, on a regular basis, the Student was provided access to a sensory room; and, said access was disciplinary in nature and a violation of the IDEA, in that she was not notified when the Student was provided access to the sensory room and she never granted her consent for the same.

Legally, OSPI notes, an IEP team does not necessarily have to update a student’s IEP each and every time it utilizes a response to intervention or positive behavioral intervention. If, however, an IEP team chose to provide a student with a particular intervention or behavioral support on a regular basis, then, in that case, the student’s IEP would need to be updated.

Factually, OSPI notes the information provided to OSPI during this investigation showed the Student was not provided with access to a sensory room during the relevant period. For example: the documentation did not indicate the Student was ever provided with access to a sensory room; during this investigation, one of the Student’s SLPs, the 2022–2023 general education teacher and the 2022–2023 special education teacher each conveyed that neither they nor any staff they worked with ever provided the Student with access to a sensory room; and these same staff members stated, generally, it was their understanding as of the 2020–2021 school year, that the Parent did not want the Student to have access to a sensory room and that they were not to provide the Student with access to the same.⁷

⁶ March and June 2022 progress reporting entries even mentioned “pictures” and “sticker scenes.”

⁷ During her interview with OSPI’s investigator, the Student’s 2022–2023 general education teacher stated, in part, ‘Student would ask for a walk or a drink of water and the paraeducator would go with her. But often Student would request to continue walking, or, occasionally disrupt other classes. Now when she becomes emotionally dysregulated, because there are no special education services, I direct her to the office.’

For the foregoing legal and factual reasons, OSPI does not find a violation in regard to the Parent's second allegation – that the Student was provided access to a sensory room and that this access was disciplinary in nature.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 30th day of January, 2023

Dr. Tania May
Assistant Superintendent of Special Education
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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.)