

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-97

PROCEDURAL HISTORY

On June 25, 2023, 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 **[REDACTED]** 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 25, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 27, 2023. OSPI asked the District to respond to the allegations made in the complaint by July 14, 2023.

On July 5, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on July 6, 2023, and invited the Parent to respond by July 19, 2023.

On July 24, 2023, the complaint investigator interviewed the Parent.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received by the complaint investigator interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 26, 2022. 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 responded to your request(s) for an individualized education program (IEP) meeting(s) in spring 2023?
2. Whether the District followed special education discipline regulations in WAC 392-172A-05140 through WAC 392-172A-05155 during the 2022–23 school year, including procedures for holding a manifestation determination and provided appropriate educational services while the Student was suspended/emergency expelled?
3. Whether the District implemented the Student's special education services in the area of social emotional/behavioral during the 2022–23 school year?

LEGAL STANDARDS

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). Individuals with Disabilities Education Act (IDEA), 64 Fed.

Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Development: The Washington state legal requirements for an IEP can be found in WAC 392-172A-01100; WAC 392-172A-03090 through WAC 392-172A-03115. When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

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). 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.

Parental Notice and Procedural Safeguards: No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision. A copy of the parents' procedural safeguards under the IDEA must accompany this notification. 34 CFR §300.504; WAC 392-172A-05015(1); WAC 392-172A-05145(8).

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year,

because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

Educational Services During Suspensions: A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 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. 34 CFR §300.530(d)(3); WAC 392-172A-05145(2).

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. IDEA, 71 Fed. Reg. 46681 (August 14, 2006) (comments to the final regulations). Districts must

take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

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. See 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. 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

1. The Student was enrolled as a 6th grader in the District on August 2, 2022, for the 2022–23 school year, and was eligible for special education services under the category of specific learning disability (SLD). The Student transferred from another Washington state school district with a current individualized education program (IEP), dated January 26, 2022.
2. The District's 2022–23 school year began on September 7, 2022.
3. The District completed an IEP acceptance statement and transfer verification on September 9, 2022, indicating their review of the Student's current January 2021 evaluation and January 2022 IEP, from the previous district. The IEP was accepted, in full, and no changes were proposed. The documents stated that the new annual IEP review date would be by January 25, 2023, and that the Student's three-year reevaluation was due January 21, 2024.
4. The Student's IEP, developed in the previous district on January 26, 2022, included annual goals in reading (fluency, determining theme), written expression (dictating a paragraph, writing sentences from a prompt), math (writing equation to solve problem, solving whole-number quotients), social/behavioral (determining size of problem, communicating personal space needs, select alternative task), and physical therapy (sensory motor support for behavior goals) as a related service. The Student's IEP provided the following specially designed instruction and related services in a *special education setting*:
 - Reading: 70 minutes a week (to be provided by special education staff)
 - Written expression: 90 minutes a week (to be provided by special education staff)
 - Math: 90 minutes a week (to be provided by special education staff)

- Social/behavioral: 100 minutes a week (to be provided by special education staff)
- Physical therapy (PT)/occupational therapy (OT) as a related service: 15 minutes a week (to be provided by physical therapist)

The Student's January 2022 IEP indicated under the section 'consideration of special factors', that a behavioral intervention plan (BIP) with a functional behavioral assessment (FBA) were included as an IEP addendum. These documents detailed the Student's 1) pattern of behaviors (retreating under a table or safe space, throwing or knocking objects over); 2) antecedents (someone touches or takes something belonging to Student); 3) positive intervention and supports (communicate feelings/needs, identify size of problem and identify potential solution, find alternate locations when needed for non-preferred activities, use zones of regulation); 4) reinforcers (current interests, alternate preferred activities); and 5) data collection.

5. On or about September 13, 2022, a District school psychologist sent an email to the Parent, inquiring about the related services provided by the physical/occupational therapist in the previous district. This email indicated that OT/PT services for sensory regulation are not offered in the District "as a SPED service area" and that the option to "continue" the service in the District would likely be through consultation by the occupational therapist.
6. The Parent forwarded this email to the previous district's physical therapist who responded to the school psychologist on September 13, 2023. The therapist described how they had provided related services to the Student and the progress the Student had made. The therapist commented that transitioning to a consultative level of service was a possible future transition.
7. On September 29, 2022, the school psychologist indicated through a series of emails that the sensory-motor related services should be provided as OT consultation minutes. The series of emails also included one from a District occupational therapist that "sensory is included under OT, but we do not try it in a school system."
8. Between October 13 and 14, 2022, the occupational therapist and school psychologist continued discussions regarding the sensory-motor services on the Student's IEP, indicating "we don't see students for sensory here, so it fell under consult and switched to OT...The Student will need to be re-evaluated to either come off services...."
9. On October 18, 2022, the occupational therapist requested that the school psychologist open a reevaluation for OT, to evaluate the Student or conduct an assessment revision to have a physical therapist take over services. The school psychologist agreed to open a reevaluation.
10. On November 2, 2022, the Student was suspended for 1.5 days, after having brought an empty AR-15 magazine to school. A level 1 threat assessment was completed on November 7, 2022, with Parent input, using the student threat assessment and management protocol (version 2021). The team did not request a level 2 threat assessment, though an individual accountability plan was developed. At this point, the total number of suspensions equaled 1.5 days.

11. On January 6, 2023, the special education teacher sent an email to staff, indicating the need to schedule an IEP meeting for the Student sometime in January. The special education teacher questioned whether a reevaluation or file review was done. The school psychologist responded that they were unaware of an evaluation or file review, and the occupational therapist reminded the team that the reevaluation or file review was discussed in November 2022. Email communications continued between team members through January 19, 2023, with the assistant principal confused about any team decisions regarding the Student, and the occupational therapist reiterating that the Student does not qualify for OT and "cannot be serviced for his OT times currently..."
12. On January 16, 2023, the Parent was sent an invitation to an IEP meeting scheduled for January 26, 2023, and the Parent responded they would attend.
13. Between January 19 and 24, 2023, the IEP team continued email discussion regarding the need for a reevaluation of the Student related to the sensory-motor services contained within the current IEP from the previous district. There was difficulty accessing online IEP forms due to this issue and the reevaluation that was "opened" in October 2022, and confusion continued as to the Student's eligibility for OT/PT services for sensory concerns.
14. On January 24, 2023, the school psychologist indicated that guidance would be needed from the District's lead psychologist to see how to move forward due to the 'open' reevaluation as the Parent had not been contacted to provide consent.
15. On January 26, 2023, a District lead psychologist provided guidance, indicating that creating an assessment revision combined with OT testing would have been the best way to have handle this issue. It was suggested that the IEP team should link the new IEP to the Student's current evaluation, dated January 21, 2021, leaving all services in place, including OT services, and that would ensure a compliant IEP.
16. On January 26, 2023, the Student's IEP team met to develop the Student's annual IEP.

The Student's January 2023 IEP included annual goals in reading (comprehension), written expression (independently write/dictate a complete paragraph), math (solving multi-digit multiplication problems), and social/behavioral (beginning a non-preferred task and remaining on task). The Student's IEP provided the following specially designed instruction in a *special education setting*:

- Reading: 80 minutes a week (to be provided by special education staff)
- Written expression: 60 minutes a week (to be provided by special education staff)
- Math: 120 minutes a week (to be provided by special education staff)
- Social/behavioral: 100 minutes a week (to be provided by special education staff)

The IEP included OT as a supplementary aid/service with 25 minutes of monthly consultation provided by the occupational therapist. Present levels of performance regarding the Student's progress related to sensory-motor services during the first semester of the 2022–23 school year were also not included in the IEP.

The IEP indicated that the Student does have behavior that impedes his learning or that of others. There is no mention of a BIP or FBA, as a part of the Student's IEP, though those documents were included as an amendment to the Student's 2022–23 IEP from the previous district, and accepted during the transfer validation process.

17. On January 26, 2023, the Parent was provided a prior written notice (PWN) following the annual IEP meeting, with implementation of the IEP to begin on January 27, 2023. The PWN indicated that the Student's IEP was updated to reflect present levels of performance and new goals. The team used the Student's January 2021 evaluation, previous IEP, IEP progress reports, input from the Parent, teachers, and therapists in offering this proposal. This PWN did not discuss the removal of PT/OT as a related service (sensory-motor) from the IEP. In addition, the PWN does not include discussion of removing the Student's previous BIP/FBA.
18. On January 27, 2023, the special education teacher indicated via email with the IEP team, including a lead school psychologist, that the Parent "is in agreement with proceeding with a full evaluation".
19. On February 23, 2023, the school psychologist shared with the IEP team that they had emailed the Parent about the three-year reevaluation consent form but had not heard back from the Parent.
20. On February 24, 2023, the assistant principal requested that a teacher send the consent information home with the Student, and the teacher indicated they had emailed the Parent that the copy of the consent form was being sent home with the Student.
21. On March 1, 2023, the Student was suspended from school for two days, due to the Student indicating harm to hurt/kill other students. A level 1 threat assessment was initiated on March 1, 2023, with contact of the Parent, as well as of parents of involved students. The threat assessment indicated that coping strategies were being supported through targeted instruction. The assessment also delineated strategies that the school would implement, including 1) review educational plan; 2) monitor all communications; 3) provide access to social skill building programs; 4) strategies for problem-solving; 5) increase supervision; and 6) alert appropriate staff. At this point, the total number of suspensions equaled 3.5 days.
22. The building-level threat assessment protocol was completed on March 6, 2023. The team indicated that they were unsure of events that would decrease the likelihood of an aggressive attack and stated that the Student has an IEP addressing behavioral issues.
23. The Student was interviewed on March 7, 2023, by the threat assessment case manager, who believed the Student responded in an open and honest way regarding why they were being interviewed and whether they would harm themselves or others.
24. On March 20, 2023, the Student was suspended for one day due to an incident with a peer that resulted in the Student throwing a chair at the wall and kicking over a stool. At this point, the total number of suspensions equaled 4.5 days.

25. On March 20, 2023, the Parent requested, in writing, that an IEP meeting be convened as soon as possible, to discuss concerns and better support the Student in school. The principal responded that same day and indicated that the special education teacher would work on coordinating the meeting. The special education teacher was included as a recipient of the principal's response.
26. The Parent did not receive any communication from the special education teacher or principal regarding the request for an IEP meeting through the month April or beginning of May 2023.
27. On May 11, 2023, the Student was emergency expelled¹ from school for a total of 10 days due to the Student threatening to harm peers and parents, with the threats more targeted towards individuals and their families. The Student also had discussed self-harm. The total number of days of suspension/expulsion now equaled 14.5 days.
28. A level 1 threat assessment was initiated on May 15, 2023, to further investigate and determine student and staff safety. At the conclusion of the level 1 assessment, the team requested a level 2 threat assessment and initiated the request. The formal request for level 2 assessment was completed on May 25, 2023.
29. On May 18, 2023, the Parent was invited to attend a manifestation determination meeting, and the Parent agreed to the meeting date of May 22, 2023.
30. The manifestation determination meeting was held on May 22, 2023, with school staff, the Parent, and Parent advocate. The team indicated on the manifestation determination form that the Student had an FBA completed in January 2022, along with a BIP. The form stated that the BIP from the previous district highlighted behaviors such as retreating under a table or throwing/knocking things over. The Parent shared during the manifestation determination meeting that the Student did not feel safe returning to school and the Parent is choosing to keep the Student at home, accessing a home-school model and exploring in-home/hospital services.

The Parent also requested compensatory services for the week the Student was emergency expelled from school (six days). The Parent was not in agreement with the behavior described that resulted in the emergency expulsion, except for a statement the Student made about 'Christians'. The team determined that the conduct did have a direct and substantial relationship to the Student's disability but was not a result of the District's failure to implement the IEP.

31. The PWN provided to the Parent following the manifestation determination meeting documented that the Parent wished to revoke consent for the Student's reevaluation. The Parent stated they would pursue a reevaluation, including an FBA and BIP, in a different district

¹ OSPI notes that recent legislation changed the term "emergency expulsion" to "emergency removal" However, this decision uses the term emergency expulsion as that was the terminology used by the District and Parent at the time of the events.

for the 2023–24 school year. The PWN included information that the Parent disagreed with the District’s determination that the IEP was implemented as written. It was noted that the principal indicated the Student was welcome to return to school, though requested a 48-hour notice to develop a safety plan. The Parent indicated the Student does not feel safe and they planned to keep the Student home, and the Parent requested compensatory services for the dates the Student was emergency expelled.

32. On May 23, 2023, the Parent formally withdrew consent for the Student’s reevaluation. The Parent indicated in the same email that the Student would not be returning to the school this year and would be changing school districts in the fall of 2023.
33. On May 23, 2023, the recovery (compensatory) services staff contacted the Parent to welcome the Student to an instructional group on Fridays from 1:15–3:00 pm. The Student would have three opportunities for recovery services (May 28, June 2, and June 9, 2023) for a total of 5.25 hours of service.
34. On May 23, 2023, the principal responded to the Parent regarding compensatory (recovery services) that would be offered on Fridays from 1:15–3:00 pm. The principal indicated that in-home hospital services were not an option as the Student is eligible to return to school and confirmed that the emergency expulsion would be converted to a seven-day suspension.
35. On May 24, 2023, the Student’s emergency expulsion was formally converted to a seven-day suspension.
36. The Parent’s complaint documents indicated that only two hours of recovery services were provided to the Student prior to the end of the 2022–23 school year.
37. On June 14, 2023, the IEP team provided progress reports to the Parent on the Student’s IEP goals. The reading goal was rated as “sufficient progress made to achieve annual goal”. Notes on the progress reported included that the Student was allowed to answer verbally, and the Student was able to complete 25% of an assignment independently. The writing goal was rated as an “emerging skill”, with notes indicating that the Student did not want to write responses or use speech-to-text resources. The Student preferred to verbally provide his responses to a scribe. The math goal was also rated as “emerging”, with notes describing a lack of confidence when solving multi-digit multiplication problems, though the Student would work through problems with an adult. The social-emotional goal was rated as “sufficient progress to achieve goal” with notes indicating this is an area of challenge for the Student, with highlighting strategies not being very successful.

CONCLUSIONS

Issue 1: Parent Request for an IEP Meeting – The Parent alleged that the District did not respond to their request for an IEP meeting in spring 2023.

When a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change

may be necessary to ensure the provision of FAPE. The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

In this case, the Parent specifically requested an IEP meeting to the principal, in writing, on March 20, 2023, following the two incidents of suspension from school. The Student was suspended for one day on March 1, 2023, and for two days on March 20, 2023. The Parent indicated the IEP meeting was needed to discuss how to better support the Student in school given the disciplinary incidents and behavioral concerns. The principal responded that the special education teacher would coordinate the meeting, though the Parent never was contacted by the special education teacher to schedule an IEP meeting to address the concerns, nor did the District respond that a meeting was not necessary. While manifestation determination meetings were later held, no IEP meeting was held during the remainder of the 2022–23 school year in response to the Parent’s request. Given this, OSPI finds a violation. The District will provide training on this topic.

Issue 2: Special Education Discipline Regulations – The Parent alleged that the District did not follow special education discipline regulations during the 2022–23 school year, including procedures for holding a manifestation determination and providing appropriate educational services while the Student was suspended/emergency expelled.

A change in placement occurs when a student is removed from their current placement because of discipline for more than 10 consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than 10 school days in a school year, because the student’s behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. Regarding manifestations, within 10 school days of the district’s decision to change the student’s placement through discipline, the district, parents, and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student’s disability. No later than the date on which the district makes the decision to remove a student, creating a change of placement through discipline for more than ten school days, it must notify the parents of that decision, and provide the Parent their procedural safeguards.

In this case, the Student was suspended for a total of 4.5 days between November 2022 and March 2023. The Parent was provided notice regarding these suspensions, though the record is not clear whether the Parent received a copy of their procedural safeguards. On May 11, 2023, the Student was emergency expelled for 10 days, which would result in a total of 11.5 days of removal from school for the Student. The Parent was provided notice, though, again, the documentation is not clear if the Parent received their procedural safeguards.

As of the May 2023 exclusion, the Student's placement had been changed via discipline. Because the Student would experience greater than 10 days of disciplinary removals, the school team scheduled a manifestation determination meeting with the Parent for May 22, 2023. This was the Student's 11.5 day of removal, exceeding the 10-school day limit of the District's decision to change the Student's placement through discipline to hold the manifestation determination. The team determined that the behavior was a manifestation of the Student's disability, and as such, the Student would be able to return to school. The Parent had provided consent for a reevaluation that would include an FBA and development of an updated BIP, although later revoked consent, stating they would pursue an FBA and BIP at the new district (which the District documented in a PWN). However, given the manifestation determination was not held in the required timeline, OSPI finds a violation.

A 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: Continue to participate in the general education curriculum; meet the educational standards established within the district; and complete subject, grade-level, and graduation requirements.

Here, the Student was out of school due to discipline for a minimum of 14.5 days. During that time, it is not clear the District provided the Student educational services until the Parent requested compensatory education following the emergency expulsion. At that point, the District offered compensatory services for the remaining three weeks of school, through a virtual format of 1.75 hours per week for three weeks (5.25 hours total). However, the Parent reported the Student only received two hours of those compensatory services. During the approximately three weeks the Student was disciplinarily excluded from school, the Student's special education services would have totaled 1,080 minutes or 18 hours. Thus, OSPI finds that the District's offer of 5.25 hours was insufficient to constitute an opportunity to access educational services. OSPI finds a violation.

Given the above, OSPI finds a violation regarding the manifestation determination timeline and the failure to provide the Student with educational services while the Student was excluded from school due to discipline. The District will provide training on special education discipline regulations and provide the Student with compensatory education. Compensatory education is an equitable remedy and there is no requirement to provide minute for minute missed time. Here, while districts are required to provide education services to students who are suspended, there is not a requirement to provide 100% of those services during discipline. Thus, the District will be required to provide nine (9) hours of compensatory education.

Issue 3: IEP Implementation – The Parent alleged the District did not implement the Student's social emotional/behavioral services during the 2022–23 school year.

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. If a student eligible for special education transfers from one Washington state school

district to Washington state school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either adopts the student's IEP from the previous school district, or develops, adopts, and implements a new IEP.

In this case, the District enrolled the Student in August 2022, and completed a transfer verification, indicating their acceptance of the Student's evaluation and current January 2022 IEP. The Student's IEP included social-behavioral goals and sensory-motor support for behavior goals as a related service provided by a physical/occupational therapist. In addition, an updated FBA and BIP were both part of the Student's January 2022 IEP.

The District never provided the sensory-motor support which supported the Student's behavior goals, as prescribed in the Student's current IEP, and did not initiate a reevaluation to determine if the Student still required those services. Rather, the District communicated to the Parent that they did not provide these services within a school setting. There was an initial attempt to "open" a reevaluation prior to the annual IEP review in January 2023. However, the Parent was not contacted to provide consent for a reevaluation, nor did this reevaluation ultimately occur.

The Student's annual IEP meeting was held on January 26, 2023. The IEP did not include present levels of performance regarding the sensory-motor support to the behavioral goals, and the meeting did not address the issue that services in this area had not been provided since the Student began the school year. The IEP team also did not discuss the FBA or BIP that had been a part of the Student's previous IEP, and those documents, though accepted through the transfer process, were not updated and appended to the new IEP, or determined not to be necessary. Thus, it was not clear, after January 2023, that the Student's BIP was being implemented.

Progress reporting occurred based on the new present levels of performance and goals for the reading, writing, math, and social/behavioral on the Student's January 2023 IEP. The team also provided progress reporting on June 14, 2023, at the end of the school year, for the reading, writing, math, and social/behavioral goals, but not sensory-motor, as no services had ever been provided to the Student. The Student made progress in reading and social emotional, while writing and math remained at the emerging skill level.

The documentation supports that the majority of the Student's IEP was implemented as written. However, OSPI finds the District materially failed to provide the sensory-motor support in the Student's transfer IEP and implement the Student's BIP. OSPI finds a violation and the District will be required to provide compensatory education. The District will provide nine (9) hours of compensatory education in sensory-motor skills by a physical or occupational therapist to support the Student's behavior goals.

CORRECTIVE ACTIONS

By or before **September 6, 2023, September 29, 2023, November 3, 2023, December 1, 2023, March 1, 2024, and June 12, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 6, 2023**, the District and Parent will develop a schedule for 18 hours of compensatory education, divided as follows: 3 reading/writing, 3 math, 3 social/behavioral, and 9 sensory-motor.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The District will provide OSPI with documentation of the schedule for services by or before **September 6, 2023**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **June 12, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **December 1, 2023** and **March 1, 2024** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **June 12, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **June 12, 2024**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-97.

The following staff from the Student's school will receive training: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Responding to requests for IEP meetings.
- Special education discipline regulations and manifestation determination procedures.
- Transfer procedures and implementation of transfer IEPs and comparable services.

The training will include examples.

By or before **September 6, 2023**, District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **September 29, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by October 6, 2023.

By **October 27, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **November 3, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 18th day of August, 2023

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.)