

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

PROCEDURAL HISTORY

On February 18, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Northshore School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 22, 2023, 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.

On March 1, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on the same day.

On March 10, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on March 13, 2023. OSPI invited the Parent to reply.

On March 23, 2023, OSPI's complaint investigator conducted a telephone interview with the Parent.

On March 27, 2023, OSPI received additional information from the District and forwarded it to the Parent on March 28, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on February 19, 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. During the 2022–2023 school year, did the District adequately address the Student's behavioral needs in the individualized educational program (IEP) according to WAC 392-172A-03110?
2. During the 2022–2023 school year, did the District follow the manifestation determination procedures to determine the relationship between the Student's behavior and disability according to WAC 392-172A-05146?

3. During the 2022–2023 school year, did the District provide the Student the opportunity to receive educational services during the Student’s suspensions according to WAC 392-400-610?

LEGAL STANDARDS

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student’s individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student’s behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student’s IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a FBA, unless the district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or, if a BIP already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR §300.530(f); WAC 392-172A-05147.

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student’s disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a FBA and behavioral intervention services that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05145.

IEP Team Decisions. The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

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. 34 CFR §300.530(d)(3); WAC 392-172A-05145(2). 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.

A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include: (a) A description of the educational services that will be provided; and (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following: (a) Course work, including any assigned homework, from all of the student's regular subjects or classes; Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to: (i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and (ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress. An

opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion. WAC 392-400-610 (1)-(4).

FINDINGS OF FACT

Background

1. On October 29, 2021, the most recent special education evaluation of the Student was completed. The Student was eligible for special education services under the category of other health impairments, primarily due to anxiety.
2. On November 19, 2021, the Student's IEP team met and developed his annual IEP, which provided the Student specially designed instruction (SDI) as follows:
 - Math: 125 minutes/weekly (provided special education teacher, in a general education setting).
 - Written Language: 125 minutes/weekly (provided by special education teacher in a general education setting).
 - Social-Emotional: 250 minutes/weekly (provided by special education teacher in a special education setting).

The Student's percent of time in a general setting was 86.74% and LRE placement in general education classes was 80–100%.

2022–2023 School Year

3. On August 31, 2022, the District held its first day of school for the 2022–2023 school year. The Student was enrolled in a District high school and his November 19, 2021 IEP was in effect.
4. On September 21, 2022, the Student was inappropriately using his cellphone during class. For this incident, the Student received a detention after school.
5. On September 27, 2022, Student was inappropriately using his cellphone during class. For this incident, the Student received an "administrative conference."
6. On September 30, 2022, according to the District's incident report, the "[Student] had an image of an air soft gun with the phrase 'You Guys Better Shut Up' on his phone that was air dropped to him during lunch. He allowed his friend to access this image on his phone and reair drop this to others in the library." For this incident, the Student was suspended October 3 and 4, 2022.
7. On October 27, 2022, the Student's IEP team met and developed his annual IEP, which provided the Student SDI as follows:
 - Math: 125 minutes/weekly (provided special education teacher, in a general education setting).
 - Written Language: 125 minutes/weekly (provided by special education teacher in a general education setting).
 - Social-Emotional: 250 minutes/weekly (provided by special education teacher in a special education setting).

The Student's percent of time in a general setting was 86.74% and LRE placement in general education classes was 80–100%.

8. On November 10, 2022, the Student was inappropriately using his cellphone during class. The disciplinary action was one "Saturday School" for two hours.
9. On December 8, 2022, the Student skipped his third period class. The disciplinary action was one after-school detention.
10. On December 12, 2022, according to the District's discipline records, the "[Student] made some concerning comments about trans people, and a joke about a student whose parent had died. The [substitute teacher] addressed the comments with directly (sic) about the insensitive nature of his words."
11. On January 9, 2023, the District emailed the Parent:

[Student] has been short-term suspended beginning tomorrow (01/10/23) for an incident involving making highly insensitive comments in the classroom. A document has been attached with additional information.

The suspension goes through to the end of the day 01/24/23. [Student] will have a re-entry conference with his administrator on the morning of 01/25 before returning to class.
12. On January 9, 2023, the Parent emailed the director of student services (director): ". . . [] would like to appeal my student [Student's] disciplinary action."
13. On January 12, 2023, the Student's case manager, who is also a special education teacher, emailed the Student and Parent:

I just wanted to reach out and offer to meet over zoom at [link] tomorrow Friday the 13th from 8:30 am to 9:00 am while you are out of school if you would like help getting caught up in any classes. I can meet via zoom during 1st period to give you the support needed for your assignment. Please reply to this email if you would like to come for this zoom meeting. In the meantime, I hope you check Schoology and do any missing assignments that you can. You can also email the teacher and ask for clarification on the assignments. Take this time to get those grades up, I know you can!

Please let me know if you have any questions.
14. On January 13, 2023, a manifestation determination meeting was held. A prior written notice (PWN), dated January 13, 2023, stated in part:

[P]arents supported the notion that the behavior leading to the suspension (hate speech) was a manifestation of his disability, the rest of the team present . . . did not. Therefore, the behavior which led to his suspension was determined to NOT be a manifestation of [Student's] special education disability.
15. On January 18, 2023, the case manager emailed the Student and Parent as follows:

I hope this email finds you well. I am writing to check on the status of your assignments as this quarter ends on Jan 27th. Please look into Schoology for assignments and try to finish

them. If you have any questions please email the teachers for any clarification on the assignments.

If there is anything that I can do to assist you. Please let me know if there are any concerns or issues that you may be facing.

16. On January 19, 2023, at 8:19 am, the Parent emailed the director, "I have not received a phone call from you regarding my student's education. He has (sic) is now on day 7 without Education."

At 10:00 am, the director responded to the Parent, "I checked with the school and wanted to make sure you received the following email:..." and the director included the case manager's email message from January 18, 2023.

17. On January 19, 2023, the director issued a decision on the Parent's appeal of the Student's suspension. The decision stated, in part, as follows:

4. I find that the student . . . is in violation of 'hate speech' as outlined in the Rights and Responsibilities Handbook Concerning Student Conduct.

5. I also find that as of today, he has served his 7th day of out of school suspension and needs educational support to be successful.

...

8. Therefore, the suspension will be modified to reflect 7 days of out of school suspension and the student will return to school on Friday, January 20th.

Decision:

The action by the school is upheld and modified.

18. On January 19, 2023, at 9:14 am, the case manager sent the following email (from the record, it is not clear if the Parent was copied on this message):

Hi [Student]

Good Morning!!

I hope you are doing well and catching up with your assignments for this semester.

Please consider me to be the point person to reach another class teacher if are struggling to find the assignments.

You can always find all the assignments posted in Schoology. If you need any help on this please don't hesitate to email me.

At 10:27 am, the same day, the Parent sent the District an email, stating:

First I would like to say there has been no instructions on how he is supposed to continue his education. He has para educators that are in his class room that help him. Is a para going to come to my house to meet his accommodations. And what about class instruction? No one has told him or I or written out how he is supposed to do work at home. There has been no meeting or one on one support. Second, there is no historical evidence that him working on school work class instruction [sic] alone without teachers physically in front of him along without his para educators that he can do this work on his

own. That is why he has an IEP. What specific plan for each class on how he will receive the education make up the work, prep for finals to ensure he will not fail.

19. On January 19, 2023, the case manager emailed the Parent:

I sent [Student] my check-in zoom link to on 1/13/23 with the expectation that he checks in frequently between 8:30-9:00 AM. Unfortunately, I did not receive a response from either the family or from [the Student] regarding checking in. While he remains on suspension, please share the best dates and times in which [the Student] and I can check in, as you and his teachers were copied in the initial email. I would like to check in daily between 8:30 and 9:00 until he is able to return to school for face-to-face instruction.

All his class-related instructions are posted via Schoology and since this is a short-term suspension there will be no staff sent to your home for accommodations support. All support and guidance will be provided via email, phone calls, zoom and any other additional communication tools needed to provide consistent support until he is able to return to school, once again, for face-to-face instruction.

20. On January 20, 2023, the Parent emailed the case manager the following, "I am requesting an IEP meeting to add new diagnosis and accommodations. The sooner the better to help [Student] be successful at school."

21. On January 20, 2023, the assistant principal sent an internal email, stating the following:

[Student] and his family met with me this morning as part of the re-entry process given the short term suspension. In meeting with the family, it was shared that there will be times in which [Student] is going to need to reach out to his parents when he is not feeling well behaviorally or having a challenging day.

Please allow [Student] the time to come down to the main office so that he can call a parent as needed. It was shared with me that he also feels that he can connect with... for additional support with behaviors as needed in addition to his parents.

Given the nature of his behavioral needs, please continue to work with the student and family on providing access to this support as we move through the school year.

22. On January 23, 2023, the Student's IEP team met and amended his IEP. The amended IEP provided the following SDI:

- Math: 125 minutes/weekly (provided special education teacher, in a general education setting).
- Written Language: 125 minutes/weekly (provided by special education teacher in a general education setting).
- Social-Emotional: 250 minutes/weekly (provided by special education teacher in a special education setting).

The Student's percent of time in a general setting was 86.74% and LRE placement in general education classes was 80–100%. The following accommodations were added to the IEP:

- Frequent check in with the student.
- Shortened assignments.
- Use of classroom breaks to pre arranged locations.
- Use of Non-Verbal Cues i.e., Head nod.

- Verbal Warning: when the student is having an oppositional behavior, impulsive behavior or inattentive behavior. i.e., Hey this is your first warning please put the phone away.

23. A PWN, dated January 23, 2023, stated:

The options considered were changes (sic) add to the accommodations:

- [Student] will use a Non-verbal cue i.e., a head nod when he gets anxious.
- A permanent laminated pass will be given to [Student] so that when he gets anxious he could use that pass to go to 3 preferred people...
- The time for the break is 5–10mins. If the time limit exceeds we can make another plan.
- [Student] will get a verbal warning from all his teachers if [Student] is having oppositional behavior, impulsive behavior, or inattentive behavior...

...

Another IEP meeting will be held for the Re- Evaluation.

24. On January 30, 2023, the Parent emailed the director, requesting an “appeal of [Student’s] suspension appeal.”

25. On February 3, 2023, the Student was inappropriately using his cellphone during class. Notes from the assistant principal stated:

Mom was immediately contacted...She...shared that she spoke to him about not using his cell phone in class. Mom is aware that discipline will be issued based on the offense, however, I shared with mom that I would be willing to forgo the discipline given that [Student] has just returned to school more consistently and that we would be looking into a schedule change for him...Mom was ok with this plan.

26. On February 9, 2023, the District’s board of directors (board) convened a hearing to hear arguments from both parties on whether to modify the Student’s suspension based on the decision of the director.

27. On February 13, 2023, the board issued a decision, which stated in part:

Although the Board concludes that the seven-day short suspension with three days held in abeyance was consistent with state law and District policy and procedure, the Board would nevertheless like to provide [Student] an opportunity to reduce the suspension if he takes actions that demonstrate he has learned from his comments...

As a result, the Board is conditionally modifying the suspension to a one-day short-term suspension. Specifically, if [Student] takes the actions described below, his disciplinary record will be amended to reflect a one-day short-term suspension for his behavioral violation...

1. [Student] will meet with a member of the District’s Race and Educational Justice Department for a positive, non-punitive, growth-oriented conversation.
2. After this meeting, [Student] will write and send...a brief letter describing what he learned from his meeting, including the impacts that his comments could have on others and how he will communicate at school in the future.

If [Student] completes these two steps, his disciplinary record will be amended as described above...

If Student does not complete these two steps, his disciplinary record will remain unchanged from the decision of the [director], namely, it will reflect a seven-day short-term suspension with three days held in abeyance if he completes the required module.

28. On February 18, 2023, the Parent filed special education community complaint (SECC) 23-23 with OSPI. The Parent's complaint alleged in part that the District failed to provide:

- Sufficient behavioral support for the Student. All of the Parent's allegations in the complaint reference the Student's December 12, 2022 incident.
- Sufficient educational support during the Student's seven out of school suspension days from January 10–19, 2023 for the December 12, 2022 incident.
- Incorrectly determined that the Student's actions on December 12, 2022, that led to a seven-day suspension, were not a manifestation of his disability.

29. On March 10, 2023, the District submitted its response. Regarding the case's first issue, the District responded in part:

In this case, as detailed in observation data, communication with Student's teachers and lack of concern from Parent, there was no indication that Student was exhibiting oppositional or impulsive behavior during the semester, prior to the December 2022 short-term suspension. Additionally, Parent did not express concern regarding oppositional or impulsive behavior until after Student was issued the second short-term suspension in December 2022. Only then did Parent bring up a possible new diagnosis and oppositional behavior.

Further, the District was already diligently keeping data regarding Student's behavior as related to his self-advocacy goals, which included reactional behavior to getting upset...This data also did not show any behavioral concerns regarding oppositional behavior. Once Student was issued the short-term suspension and the IEP team was made aware of, though not given, the documentation regarding Student's new diagnosis, it timely reconvened, recommended and began the process of a reevaluation.

Regarding the second issue, the District provided in part:

WAC 392-172A-05146 provides that within ten school days of any decision to change placement of students who are eligible for special education services due to a violation of the student code of conduct, the IEP team is required to review all relevant information 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 a direct result of the school district's failure to implement the IEP.'

Here, Student was not suspended for 10 days or more during the school year. His combined suspensions totaled nine days of suspension – his first suspension was for two days and his second, related to the current matter, was for seven days. Therefore, due to the Student's total suspension period being less than 10 school days, the District was not required to hold a manifestation meeting in response to the December 2022 short-term suspension. The District did so, however, and met at the agreed-upon date and time of January 13, 2023. This meeting occurred within ten school days of Student's removal from [District school] on January 10, 2023...

At the January 13, 2023 meeting, the Student's IEP team was appropriately constituted with the required team members...The team considered and applied the manifestation

determination rule to the facts regarding Student's behavioral violation in December 2022 and determined that the short-term suspension issued on January 10, 2023 was not a manifestation of Student's disability...

Regarding the third issue, the District provided in part:

District initially contacted Student and Parent on January 12, 2023, providing them with a Zoom link and message that [case manager] could meet with Student during 1st period to provide him with support and that he could check Schoology to work on any missing assignments...When [case manager] did not hear from Student or Parent, she followed up with them again on January 18, 2023 and again on January 19, 2023...After Parent complained on January 19, 2023, that there had been no instructions, [case manager] followed up again, but she did not receive a response...Parent also complained to [the director], who forwarded [case manager] email to them...Throughout that time period, as well as earlier in the school year, Student had the opportunity to access and complete his assignments through Schoology.

30. On March 16, 2023, the Student's IEP team met and amended his IEP. The amended IEP provided the following SDI:

- Math: 125 minutes/weekly (provided special education teacher, in a general education setting).
- Written Language: 125 minutes/weekly (provided by special education teacher in a general education setting).
- Social-Emotional: 250 minutes/weekly (provided by special education teacher in a special education setting).
- Behavior: 125 minutes/weekly (provided by general education teacher in a general education setting).

The Student's percent of time in a general setting was 86.74% and LRE placement in general education classes was 80–100%.

31. On March 23, 2023, OSPI's complaint investigator conducted a telephone interview with the Parent. The Parent expressed during the 2021–2022 school year, she had a good working relationship with the school's administration, and this helped the Student with his anxiety. For the 2022–2023 school year, a new administration took over at the Student's school, and the Parent expressed that it was not beneficial to suspend the Student because attending school is one of the things that causes the Student anxiety and not being in school and then returning to school adds to that anxiety.

Regarding the December 12, 2022 incident, the Parent expressed that when the Student made his comment, the class was being loud and that the substitute teacher may have mis-heard the Student. The Parent also expressed that the District personnel who attended the manifestation determination were not informed as to the fact that the Student's acting out is directly related to his anxiety. Finally, the Parent stated that she could not respond to the case manager's January 12 and 18, 2023 emails regarding educational support for the Student during his suspension because the Parent was attending to her Student who was in crisis mode because he had been suspended.

CONCLUSIONS

Issue One: Behavioral Needs – The Parent’s complaint alleged, in part, that the District failed to provide sufficient behavioral support for the Student. In the present matter, District records show the Student was suspended for a December 12, 2022 incident the District stated was hate speech and engaged in at least five instances of inappropriately using his cellphone. The December 12, 2022 incident will be primarily addressed under this issue. The cellphone incidents will not be addressed here because: (1) all of the Parent’s allegations in the complaint referenced the Student’s December 12, 2022 incident and not the Student’s cellphone use; and (2) The Student’s IEP from January 23, 2023 showed that the Student’s IEP team is attempting to address the cellphone use by instituting positive behavioral interventions, supports, and other strategies to address the Student’s behavior. If this issue continues to be a problem, OSPI recommends that the IEP team may want to consider whether different or additional behavior supports are needed.

In developing, reviewing, and revising each student’s IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student’s behavior. This means that in most cases in which a student’s behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student’s IEP will include positive behavioral interventions, strategies, and supports to address that behavior.

When an IEP team is considering what behavioral supports are necessary to address a student’s behavior problems, the IEP team must consider a student’s actions that “can be readily anticipated to be repetitive.” The present case’s record does not show that the type of action the Student engaged in on December 12, 2022 had previously occurred during the 2022–2023 school year. Additionally, as a result of the December 12, 2022 incident, there was a manifestation determination held in which it was determined that the Student’s actions on December 12, 2022 were not a result of his disability. The manifestation determination will be discussed more thoroughly below. Further, due to concerns regarding the Student’s behavior following the December 12, 2022 incident, the District initiated a reevaluation, and added accommodations and specially designed instruction for behavior to the Student’s IEP.

As such, it cannot be said that based on the information about the Student’s needs that existed during the 2022–2023 school year, the Student’s IEP team could have predicted the December 12, 2022 incident and should have prepared for it with specific special education supports. Further, as noted above, the IEP team was addressing other behavior concerns. On January 20, 2023, the Parent emailed the case manager the following, “I am requesting an IEP meeting to add new diagnosis and accommodations. The sooner the better to help [Student] be successful at school.” On January 23, 2023, an IEP meeting was held that added accommodations to the Student’s IEP to address the Student’s behavior and the District mentioned beginning a re-evaluation process. These facts demonstrate that the District was providing behavior supports and doing what they were supposed to do in response to new behavior concerns. Thus, based on the facts of the present case and the applicable law, OSPI does not find a violation regarding this issue.

Issue Two: Manifestation Determination – The Parent’s complaint alleged in part that the District incorrectly determined that the Student’s actions on December 12, 2022 that led to his suspensions were not a manifestation of his disability.

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.

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority “vote.” If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency’s proposals or refusals, or both, regarding the child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

In the present matter, the District was not required to hold a manifestation determination because the Student’s suspensions for the 2022–2023 school year up to the point the complaint was filed added up to nine days, and not the ten days necessary to trigger a manifestation determination under state special education regulations. The Student was suspended two days (October 3 and 4, 2022) for a September 30, 2022 cellphone incident, and seven days (January 10–14 and January 17–19, 2023) for the December 12, 2022 incident. These two suspensions add up to nine days.

Despite this, the District held a manifestation determination on January 13, 2023. A PWN, dated January 13, 2023, shows that the Parent attended the meeting and the Parent’s position on this matter was considered, and despite that position, the District’s team members present at the manifestation determination concluded that the December 12, 2022 incident was not a result of the Student’s disability. Regardless, as discussed above, the District subsequently initiated a reevaluation, and added accommodations and specially designed instruction in behavior to the Student’s IEP to address emerging concerns about the Student’s behavior.

Based on the present case’s facts, the District did perform the manifestation in a timely and appropriate manner, and although the Parent may not agree with the decision, the record shows sufficient grounds for the decision the District reached. As stated above for the first issue, there has been no evidence reviewed in the present record demonstrating that the December 12, 2022 incident could have been expected to happen. Thus, OSPI does not find a violation regarding the second issue.

Issue Three: Educational Services During Suspension – The Parent’s complaint alleged in part that the District failed to provide sufficient educational support during the Student’s suspension for the December 12, 2022 incident.

A school district may not suspend the provision of educational services to a student in response to behavioral violations. 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. During the suspension 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. A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following: course work, including any assigned homework, from all of the student's regular subjects or classes; and access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to: (i) coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with assignments and course work for all of the student's regular subjects or classes; and (ii) communicate with the student, parents, and the student's teacher(s) about the student's academic progress. An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

In the present matter, the Student was originally suspended for ten school days and that suspension began on January 10, 2023. The District’s first contact with the Student and Parent was through the case manager at 10 am on January 12, 2023. The case manager’s email informed the Student that his schoolwork was available on Schoology and that the case manager, who is also a special education teacher, was available to help him over Zoom. On January 18, 2023, the case manager reached out again to the Student and Parent, and she followed up again on the next day. On January 19, 2023, the director made the decision to modify the suspension and remove the final three days and the Student returned to school on January 20, 2023.

The District partially satisfied its educational support responsibilities during the Student’s suspension. The applicable regulations require the District to try to contact a student to provide educational support, provide the student course work, and access to school personnel who can help the student with the work. In this case, the District did that in regard to the Student’s general

education course work, but there is no evidence in the record that either the Parent or the Student was contacted specifically to provide the Student his SDI minutes (math: 125 minutes/week; written language: 125 minutes/week; and social-emotional: 250 minutes/week). The 30-minute Zoom session proposed by the case manager would not have been sufficient to cover the Student's SDI minutes even if those Zoom sessions would have occurred each day the Student was suspended. For this reason, OSPI finds that there is a violation regarding the third issue.

Based on this violation, the Student will be awarded the following compensatory education.

CORRECTIVE ACTIONS

By or before **May 5, 2023** and **September 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **April 28, 2023**, District and Parent will develop a schedule for the compensatory education, divided as follows: 125 minutes math, 125 minutes written language, and 250 minutes social-emotional.

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 compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **May 5, 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.

By or before **August 31, 2023**, the compensatory education must be completed.

By or before **September 15, 2023**, the District will provide documentation to OSPI that it has completed the corrective actions.

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 **September 15, 2023**.

DISTRICT SPECIFIC:

None.

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 10th day of April, 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.)