

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-138**

### **PROCEDURAL HISTORY**

On November 21, 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 Shoreline 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 November 23, 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.

On December 13, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on December 14, 2022. OSPI invited the Parent to reply.

On December 26, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 27, 2022.

On January 9, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. OSPI forwarded the information to the Parent on the same day.

On January 11, 2023, OSPI received additional information from the Parent. The information was forwarded to the District on the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on November 22, 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. Did the District develop an individualized education program (IEP) for the Student that considered the recommendations of the private providers and concerns from the Parent according to WAC 392-172A-03110?
2. Did the District provide the Parent with special education progress reports as required by WAC 392-172A-03090(1)(c)?

## LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (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.

Progress Reports: An IEP must contain a description of how the district will measure and report the student's progress toward their annual IEP goals. WAC 392-172A-03090(1)(c).

## FINDINGS OF FACT

### Background: 2021–2022 School Year

1. During the 2021–2022 school year, the Student was a nine-year-old third grader who attended a District elementary school. The Student was eligible for special education services under the category of autism.
2. On September 10, 2021, the 2021–2022 school year began in the District. The Student began attending school in-person for the first time since March 2020.
3. On September 29, 2021, the Student's IEP team met to discuss the Student's educational placement. The team discussed the following issues, in part:
  - Explanation of program monitoring for goals
  - Parent requested a functional behavioral assessment (FBA)
  - Parent requested recommendations for private providers
  - Goals and placement based on data collection
  - Additional meetings as needed
4. The prior written notice, dated September 29, 2021, indicated no proposals or refusals were considered.
5. On November 2, 2021, the District conducted an IEP meeting to review the Student's current IEP, review instructional needs, discuss annual goal progress, and discuss recovery services. The IEP stated the Student displayed numerous challenging behaviors, including yelling, throwing items, lying on the ground, and pushing/hitting/kicking/scratching/biting others. Regarding behavior, the IEP stated:

She also benefits from a consistent daily schedule, developing communication with photos, symbols, and written words, consistent staff support throughout the day and consistent immediate feedback from all 4 teaching staff and 4 therapists throughout the day. [Student's] challenging behaviors also happen on the playground and PE (physical education). For [Student] to physically interact with other students, she requires a 1:1 staff support during recess and P.E.

The Student's IEP provided for IEP goals in the areas of math, reading, written expression, behavior, communication, fine motor, and social/emotional. The IEP provided for 11 accommodations, including a reinforcement system, augmentative communication system, and an iPad. Supports for school personnel were right response training once a year.

The IEP provided the following special education services between November 9, 2021 and November 8, 2022, all to be provided in the special education setting:

<b>Service(s)</b>	<b>Service Provider</b>	<b>Monitor</b>	<b>Frequency</b>
Communication	SLP	SLP	180 Minutes / Monthly
Fine Motor	OT/COTA	OT	40 Minutes / Weekly
Behavior	Special Ed Staff	Special Ed Teacher	120 Minutes / Weekly
Fine Motor	Special Ed Staff	Special Ed Teacher	100 Minutes / Weekly
Math	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly
Reading	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly
Social/	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly
Emotional Skills	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly
Daily Living/ Adaptive	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly
Communication	Special Ed Staff	Special Ed Teacher	150 Minutes / Weekly

The Student was to spend 1,700 minutes per week in school, with 1,205 minutes spent in the special education setting and 29.12% of her time in the general education setting.

The Student's IEP stated that neither extended school year (ESY) services nor an emergency response protocol was needed.

6. The prior written notice, dated the same day, stated the proposed or refused action was to "update IEP to represent progress and current needs." No specific proposals or refusals were addressed in the notice.
7. Based on later documentation in the Student's June 2022 IEP, the Parent requested that the Student attend school part-time at the November 2021 IEP meeting. The June 2022 IEP stated:
 

...[Student] also has inconsistent attendance due to her previous ABA (applied behavioral analysis) by [private ABA agency] and her own medical needs. In November 2021, [Student's] family altered the school schedule so she could attend private ABA therapy and speech therapy. The IEP continued to offer a full day at school, however, [Student] attended half days Monday-Wednesday and all day on Friday to access these services and private therapies.
8. The complaint investigation timeline began on November 22, 2021.
9. On December 15, 2021, the Parent, IEP manager, speech/language pathologist (SLP), school psychologist, and occupational therapist met to conduct an FBA. Much of the information referred to the "FBA FACTS form/FBA Pathways Form." The "Functional Assessment Checklist for Teachers and Staff (FACTS)" identified the following problem behaviors:
  - Physically aggressive towards adults and students in her vicinity
  - Hits with open palm, kicks, bites, spits in the direction of someone

- Throw objects towards others (rocks, pumpkins, dirt, other which require intervention – blocking, CPI interventions)
- Indicators of escalation: voice gets loud, slams hands down on the table, and swipes materials from her desk.

The form noted, "Has a 1:1 all day which is not documented in the IEP but needs one." The form indicated that a behavior intervention plan (BIP) should be considered for the Student's behavior and a "Competing Behavior Pathway" be completed.

10. The "Functional Behavior Assessment – Competing Pathways Summary" addressed the Student's aggressive behavior. The plan included setting event, antecedent, teaching, and consequence strategies that focused on communication, breaks, and teaching and modeling "Safe Hands."
11. On December 16, 2021, a psychologist from a children's hospital wrote a letter, recommending the following:
  - Student should receive ABA in the home or in a center that includes parent training.
  - Given Student's level of disruptive behavior, Student should receive up to 40 hours of ABA.
  - Student needs a highly structured environment and speech and OT "imbedded within the school week."
  - Recommends "more robust behavioral services at home and school, along with speech and OT services."
12. In February 2022, the District provided a report on the Student's progress towards the annual goals based on the November 2021 IEP. The Student's progress ranged from demonstrating an emerging skill to mastering some of the goals.
13. According to a later April 2022 email from the District school psychologist to the Parent, the Parent had requested an evaluation and provided consent in "early March" that resulted in the evaluation needing to be completed by May 2, 2022. The email stated, "Parent requested evaluations are allowed to be extended if the parent agrees..." The District suggested extending the evaluation timeline to meet on May 16 or 17, 2022. The Parent agreed to meet on May 16, 2022, to discuss the evaluation results.
14. On March 24, 2022, the Student's IEP team, including the Parent's legal counsel and private ABA providers, met to discuss the BIP, adding a behavior goal, 1:1 services, and recovery services. Team considerations included the need for a communication device, 1:1 supervision, and proficiency in both languages the family spoke. Accommodations included a BIP, use of an augmentative communication device, and reinforcement system, among others. The IEP team added full-time 1:1 adult support/paraeducator as a supplementary aid and service to the Student. According to the District, the District received input from the Parent's private providers about the BIP.
15. The prior written notice, dated the same day, stated the services of a 1:1 paraeducator for the Student were proposed. The rationale explained that the Student had experienced "significant

regression in goal areas of behavior and social/emotional..." The notice also addressed recovery services and private therapy. The notice stated:

The IEP team recommends 2880 minutes for goal recovery in the areas of Speech & Language, Occupational Therapy, Daily Living/Adaptive, Social Emotional, and Behavior. Also recommended is an additional 10 hours of private therapy (SLP, OT, ABA) with the family choosing the service provider. [District] will pay for the additional ten hours of private therapy.

16. On March 31, 2022, the Parent's legal counsel emailed the District's legal counsel regarding feedback about the BIP from the Parent's ABA providers. The email, in part, stated the Parent requested an IEP meeting so that the feedback could be "incorporated into the proposed BIP."
17. Between May 5 and 12, 2022, the school psychologist and the Parent exchanged emails about the Parent and the private ABA providers completing behavior surveys to provide evaluation information about the Student. The private providers contributed information about the Student's receptive and expressive language.
18. On May 12, 2022, the team that again included the Parent and the Parent's private ABA providers met to review the proposed BIP. According to the District, the BIP incorporated some of the private providers' suggestions.
19. Meanwhile, in May 2022, the District conducted a reevaluation of the Student. On May 16, 2022, the evaluation team that included the Parent and the private providers met to discuss the reevaluation. The reevaluation consisted of assessments in the following areas: behavior; cognitive; communication; social/emotional; academic; fine motor; daily living/adaptive, and medical-physical.

The Parent and private service providers contributed information to the reevaluation. The Parent also provided input into the reevaluation, including information about the Student's behavior at home and medical information about the Student's chromosomal disorder that may eventually cause the Student problems in motor skills, cognitive skills, vision, and psychiatric symptoms, among others. The report stated the following Parent concerns:

[Student] does not have concern for safety. This is one of her parent's main concerns. She can be aggressive and hit her younger sister, often unprovoked, so parents are worried about both of their safety. They also worry about her limited speech and vocabulary. [Student] is not talking much and we are concerned. Her behavior improved a little bit because of ABA but her speech is still very limited. She doesn't make eye contact when you talk to her. She only eats [certain foods], not healthy foods. Parents have sleep, nutrition, toileting, speech and attention concerns.

The private ABA provider completed a survey of the Student's receptive and expressive language.

The evaluation results showed the Student displayed significant delays in all areas. The evaluation report recommended special education services in the following areas:

- Daily living/Adaptive
- Communication

- Math
- Reading
- Written expression
- Social/Emotional skills
- Behavior

20. On June 6, 2022, the Student’s team, including the Parent’s legal counsel and private providers, met to review the IEP in light of the reevaluation results. The IEP continued to provide annual goals (and benchmarks/short term objectives) in the areas of math, reading, written expression, behavior, communication, daily living/adaptive, and social/emotional. The Student’s IEP also provided for 13 accommodations, including a BIP, reinforcement system, school/home communication system, and an augmentative communication system, among others. Modifications included an iPad and a seat belt harness, and staff supports were speech/language pathologist consultation with classroom staff and crisis prevention institute (CPI) training for staff. Fine motor services were dropped (although OT services continued) and behavior services were increased from 120 minutes a week to 150 minutes a week. The remaining services were the same as the previous IEP.

21. At the meeting, the District proposed a revised BIP. The BIP addressed the Student’s aggressive behavior, including when she was a danger to herself or others. The plan addressed preventive steps and teaching the Student new skills that included communicating needs, a self-regulatory strategy, and responding to positive behavior. If the Student engaged in unsafe behaviors, the plan called for cueing the Student to go to the “Courtyard to be safe” that included the staff using protective mats and gear. The plan also addressed when the Student de-escalated. In addition, the plan called for specific behavior to be tracked.

22. In June, 2022, the District provided another report on the Student’s progress towards the annual goals. All the progress on the goals was indicated by an emerging skill because there was insufficient data to calculate progress due the recency of the new goals. Regarding progress reports, the District stated:

Despite a pattern of absences, early dismissals, and general disruption to the normal school schedule, the District managed to address the Student’s goal areas and provide data to Parents in compliance with the progress reporting schedule in Student’s IEP. In between progress reports issued in February and June 2022, the Student missed at least 31 full or partial days of school.

### **2022–2023 School Year**

23. At the start of the 2022–2023 school year, the Student was a fourth grader who attended a District elementary school. The Student continued to be eligible for special education services under the category of autism.

24. On September 1, 2022, the school year began in the District.

25. On October 11, 2022, the IEP team, including representatives from a different private ABA provider, met to address the Parent’s request to increasing SLP and OT services. The Parent shared concerns about the Student’s difficulties both at school and home and her slow progress. The Parent stated that the private providers recommended a program of “90% of

OT, SLP and ABA and 10% of other learning (academics) until her behavior improves. But the school is currently giving her 1% of OT and SLP and other 99% is reading and writing and math and music." The Parent requested a private placement where the services reflected the recommendations from the private providers. The Parent indicated that if the District did not provide the private placement, the Parent would no longer send the Student to school.

26. According to a prior written notice, the Parent requested additional SLP and OT services and a private placement with ABA therapy. The District denied the request for additional SLP and OT services because they "are not needed for [Student] to make progress on her IEP goals." Regarding the request for private placement, the notice stated:

The school team shared that [Student] made progress on IEP goals and had a successful school experience during the 21-22 school year when [Student] had consistent attendance and there was collaboration with her private ABA providers. [Student] has not had consistent attendance this Fall due to her outside therapy schedule.

The notice stated that the District recommended the Student to consistently attend school full days to enable the Student to benefit from the services offered and the private services are provided outside of the school day during consistent times. In addition, the Parent provided a release of information for the District to review the information from medical providers and an IEP meeting would be scheduled to review the medical information and discuss the private placement request.

27. On November 8, 2022, the team met again to discuss the Parent's request for a private placement. Participants included the most recent private providers, representatives from other public agencies, and one of the Student's medical providers. The medical provider contributed a letter, dated November 4, 2022, that reiterated the December 2021 recommendation from the psychologist from a children's hospital for 40 hours a week of ABA therapy. The provider further recommended a combined 10 hours of SLP and OT per week. The letter further stated, "The family has researched options and requests a transfer to [nonpublic agency]. A second choice is [specialty school]. Or any school that will provide speech, OT and ABA therapy all in one location."
28. The prior written notice from the November 8, 2022 IEP meeting extensively documented the input from the team and other participants and addressed each request from the Parent and the participants. In summary, the District rejected the Parent's request for a private placement, "due to progress made in school when [Student] is in attendance." The District stated it was ready to serve the Student for the full school day and "believes she would benefit from receiving the complete services on her IEP on a consistent basis. If the family would like to discuss a partial day, that is a choice a family can make, and the school team is willing to coordinate with the family and the ABA team to support scheduling."

The team did not again address the request for more SLP and OT services. However, the Parent's request was addressed at the previous IEP meetings.

29. On November 9, 2022, the private ABA provider emailed the special education director and Student's special education teacher, among others. The private provider requested access to the Student's behavior data. The Parent's complaint alleged the District failed to provide access to the behavior data by November 21, 2022, the date of the complaint.
30. On November 16, 2022, a genetic counselor wrote a letter, describing the Student's genetic disorder. The letter indicated that the Student's hearing and vision may "impact her ability to participate in school" after the age of 12.
31. On November 21, 2022, OSPI received the Parent's complaint.
32. At the time of the complaint, the first semester of the 2022–2023 school year had not been completed. Therefore, the Parent had not received a progress report during the 2022–2023 school year.
33. Currently, the Parent is not sending the Student to school.

## **CONCLUSIONS**

**Issue One: Parent and Private Provider Input** – The Parent alleged the District failed to consider the input from the Parent and the private providers when developing the Student's IEP. A district is required to consider the input from a parent and recommendations from the parent's private providers in developing a student's IEP.

Here, the IEP team met to review and revise the Student's IEP in November 2021, December 2021, March 2022, May 2022, June 2022, October 2022, and November 2022. The IEP team offered a full day of special education services in the areas of math, reading, written expression, daily living skills, communication, social/emotional skills, behavior, and OT. A 1:1 paraeducator was also added to the Student's IEP. The Student received private services in the area of SLP, OT, and ABA. The Parent chose to send the Student to school on a part-time basis because the private services were provided during the school day. Due to a lack of progress, according to the Parent, the Parent requested an increase in the amount of SLP and OT. Later, the Parent requested a private placement. The Student's medical providers provided letters, recommending a structured program that included at least 40 hours of ABA, along with 10 hours of SLP and OT services. One medical provider indicated that the Parent had chosen a nonpublic agency and specialty school for the Student's placement.

According to the documentation, the District considered the Parent's and private providers' input at each meeting. The prior written notices documented the proposals, rejections, and their rationales, among other pertinent information, which indicated private provider and Parent input was consistently considered. The District rejected the recommendations that were based on the Student attending school on a limited basis. The District stated the Student showed some progress in the District's program while not attending regularly and believed the Student could make reasonable progress if she attended school full time. The District is required to consider the input from the Parent and the private providers, but it is not required to implement the recommendations.



It is important to be aware of the potential differences between medical necessity and educationally appropriate. While services for the Student may be clinically beneficial, the Student may not necessarily need those services to receive a free appropriate public education (FAPE). For example, the medical providers recommended a medical program model—a program the Parent described as focusing 90% on ABA, speech, and OT, and 10% on academics. This may have been beneficial to the Student; however, the Student’s IEP team determined that was not educationally appropriate and would not provide a FAPE. In addition, the documentation indicated that the Parent’s requests for more services and a private placement were, at least in part, based on the Student’s behavior at home. While understandable that the Parent wanted more services, the District was required to address the Student’s behavioral needs so the Student could access their education. The District made a reasonable decision, with input from the Parent and private providers, to offer a full-time program that was based on the Student’s needs and abilities. It was the Parent’s choice to not avail the program offered by the District. No violation is found.

**Issue Two: Progress Reports** – The Parent alleged the District failed to provide progress reports to the Parent. The Parent also alleged the District did not provide the Parent’s ABA provider with access to the Student’s behavior data. A district is required to provide the parent with information on the student’s progress towards their annual goals.

Here, the documentation showed that the District provided the Parent with progress reports in February and June 2022. However, the Parent based their complaint on the private ABA provider’s request for access to the Student’s behavior data. In November 2022, the private ABA provider requested the District provide access to the Student’s behavior data. As of November 21, 2022, the date of the complaint, the data was not provided. The data may have been beneficial in coordinating services at home and school, but there was no requirement that the District provide access to the data. The District provided progress reports pertaining to the Student’s annual goals. No violation is found.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this 20th day of January, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
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**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.)