

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-38**

### **PROCEDURAL HISTORY**

On March 21, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) and Complainant (Aunt), referred to collectively as the Family, of a student (Student) attending the Colville School District (District). The Family alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 23, 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 April 3, 2023, OSPI received the District's response to the complaint and forwarded it to the Family on April 5, 2023. OSPI invited the Family to reply.

On April 10 and 11, 2023, OSPI contacted the District to request additional information. On April 11, 2023, OSPI received the information and forwarded it to the Family on the same day.

On April 18, 2023, OSPI received the Family's reply, and OSPI forwarded it to the District on the same day.

On April 21, 2023, OSPI contacted the District to request additional information. On April 21 and 24, 2023, OSPI received the information and forwarded it to the Family on April 25, 2023.

On April 21, 2023, OSPI contacted the Family to request additional information. On April 21, 2023, OSPI received the information and forwarded it to the District on April 25, 2023.

On April 25, 2023, OSPI's complaint investigator conducted a telephone interview with the Family, and a separate telephone interview with the Student's teacher.

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

### **ISSUES**

1. During the 2022–2023 school year, has the District been appropriately implementing the Student's individualized educational program (IEP), including the Student's behavioral intervention plan (BIP), according to WAC 392-172A-03110?
2. During the 2022–2023 school year, did the District follow procedures to determine and provide an appropriate interim alternative educational services (IAES) placement for the Student under WAC 392-172A-05149?
3. Did the District follow procedures to conduct a functional behavioral assessment (FBA) and develop or amend the Student's BIP?

## LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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. 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 disabled child and those required by the IEP." Baker v. Van Duyn, 502 F. 3d 811 (9th Cir. 2007).

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).

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).

Special Circumstances: School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student: (a) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district; A student removed to an interim alternative educational setting under this section must: Continue to receive educational services that provide a FAPE, so as 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. The student's IEP team determines appropriate services. (b) The student's IEP team determines the interim alternative educational setting. (3) A student removed to an interim alternative educational setting under this section must receive a functional behavioral assessment and behavioral intervention services to the extent required in WAC 392-172A-05147 or 392-172A-05148. WAC 392-172A-05149. Whether a child's home would be an appropriate interim alternative educational setting under 34 C.F.R. § 300.530 would depend on the particular circumstances of an individual case such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals. *QUESTIONS AND ANSWERS: ADDRESSING THE NEEDS OF CHILDREN WITH DISABILITIES AND IDEA'S DISCIPLINE PROVISIONS* at Question D-5, U.S. DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES (JULY 19, 2022).

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).

## **FINDINGS OF FACT**

### **Background: 2021–2022 School Year**

1. For the 2021–2022 school year, the Student attended a district other than the one that is the basis of the present complaint.
2. The Student's annual IEP from April 25, 2022 provided the Student the following specially designed instruction (SDI) from June 19, 2022 through April 25, 2023, in a special education setting, provided primarily by a special education teacher:
  - Math: 20 minutes/ 5 times weekly
  - Reading: 20 minutes/5 times weekly
  - Social/Emotional/Adaptive: 30 minutes/5 times weekly
  - Written Language: 15 minutes/5 times weekly
  - Communication: 25 minutes/5 times weekly (provided by speech language pathologist (SLP))
  - Visual Perceptual Motor: 270 minutes/annually (provided by occupational therapist (OT))

The Student's total minutes per week in school were 1,200 minutes and 557.5 minutes were provided in a special education setting. The percent of time in a general education setting was 53.54% and LRE placement in general education classes was 40–79%. The Student was on a modified day schedule and attended school from 8:30–10:30 due to behavior concerns. The Student's transportation was marked "special", and the emergency response protocol (ERP) was marked "yes". This IEP did not include a one-to-one paraeducator or additional adult support for the Student.

3. The prior written notice (PWN) from April 25, 2022 stated, in part:

Per school and hospital recommendations, due to safety concerns to [the Student] and peers; it is recommended that [the Student] attend school remotely. The team has drafted a plan to increase [the Student's] day once it is determined that [the Student] is no longer an eminent (sic) risk of causing serious bodily harm to himself, staff, or peers.

...

[Student's] mom declined to sign the IEP stating that she is concerned that he is not in school full time, her request for a 1:1 to support him at school, and concern that his eligibility category does not reflect his disability.

...

The BIP (behavior intervention plan) was completed and reviewed with parent the 03/29/2022. An ERP...was reviewed and signed by parent 02/08/2022.

### **2022–2023 School Year**

4. On August 29, 2022, the District held its first day of instruction. The Student had transferred into the District and was a fifth grader at an elementary school. The Student was enrolled in the District's behavior program (program), which is a self-contained setting.

In an April 21, 2023 email, the District's executive director of student services (executive director) stated:

The transfer IEP that was in place from 8/29/22-10/5/22 did not contain any additional adult support or 1:1 para educator support. The IEP beginning 10/6/22 contained additional adult support (not 1:1). Student was provided additional support beginning on the first day of school. Daily schedules...show student was continually supported by the lead teacher or the paraeducator.

In an April 25, 2023 telephone interview, the Student's teacher shared the following:

- The Student was the only self-contained student in the program at the start of the school year until November 7, 2022.
- At the beginning of the school year, the program was staffed by the teacher and a paraeducator.
- Between the teacher and the paraeducator, the Student always had additional adult support.
- The teacher did mostly pull-out services and she supported other students who were in general education and other students who would come into the program for instructions and breaks.
- On December 5, 2022, a one-to-one paraeducator was hired for the Student and that person continues to serve in that capacity.

5. A PWN from August 30, 2022 stated, in part, "The team proposes to change [Student's] daily schedule to begin at 8:30am and conclude at 12:30 pm...to allow him to join his 5th grade peers for lunch."

6. A PWN from September 2, 2022 stated, in part:

The district proposes to accept the 4-26-21 Evaluation Summary/Eligibility Report from [other district].

...

The district proposes to reject the 4-25-22 IEP from [the other district].

The plan does not match the attached Prior Writing Notice (PWN; 4-25-22), which is intended to describe the district's plans contained within the IEP.

In an April 11, 2023 email, the executive director explained that the "District tried to approximate services comparable to those described in [Student's] IEP [from his other district] and those outlined in his PWN associated with that IEP until new...Present Levels of Academic Achievement and Functional Performance were obtained and a new IEP drafted in October."

7. At least 16 restraint and isolation incidents occurred involving the Student from August 29, 2022, until and including December 8, 2022.

8. On Friday, September 23, 2022, the teacher emailed the District's executive director as follows, "[The Family is] okay with us making a WYSE (WISE-(Wraparound with Intensive Services)) referral to get him support since he had a WYSE team at his last school."

9. On October 6, 2022, the Student's IEP team met and developed an IEP. The Student's IEP from October 6, 2022 provided the Student the following SDI from October 6, 2022 through April 24, 2023, in a special education setting, primarily provided by a special education teacher:

- Social-emotional/Behavioral: 60 minutes daily

- Math: 30 minutes daily
- Reading: 30 minutes daily
- Writing: 20 minutes daily
- Communication: 30 minutes/2 times weekly (provided by SLP)
- Fine Motor: 40 minutes monthly (provided by OT assistant)

The IEP also included the following related services and supplementary aids and services:

- Additional Adult support: 190 minutes daily (provided by a paraeducator)
- Self-Contained Behavior Intervention Program: 176 minutes daily
- Paraeducator: 55 minutes daily (general education setting)

The Student's total minutes per week in school were 1,200 minutes and 950 minutes per week were spent in a special education setting. The percent of time in a general education setting was 20.83% and LRE placement in general education classes was 0–39%. The Student's transportation was marked "special", and the ERP was marked "yes". The Student had additional adult support throughout the day, and he received his services within the self-contained behavior intervention classroom. He did not attend general education. The Student was on a shortened school day schedule and the plan was to increase the length of his day as he was able to tolerate additional time.

10. A PWN, dated October 14, 2022, stated, in part:

The team is proposing to continue to have [Student] on a partial school day of 8:30 am-12:40 pm to continue to build stamina and to work on his ability to be safe in school.

...

The team had a discussion about building [Student's] capacity to be at school and be safe with his current day of 8:30-12:40 due to elopement incidents, physical aggression toward others, and suicide ideation.

\* [Student's] mother and aunt brought up the concern about having a 1:1 para for [Student], the administrator assured them the job has been posted, but at this time there has been no applicants for the position.

\* All team members were in agreement with this new developed plan including [Student's] mother and aunt.

...

The IEP team considered and rejected increasing [Student's] day ... The reason this option was rejected due to [Student] eloping 11 times in past month. He has also tried to jump over the library to kill himself twice while at school. He is also increasing physical aggression towards peers/staff in the past few weeks.

...

[Student] was referred to working with the WYSE team at [organization] ... after the first suicide ideation attempt at school. The WYSE team is going to be involved with supporting [Student] and his family.

11. On November 9, 2022, the Student's IEP was amended. The IEP provided the Student the following SDI from November 14, 2022 through April 24, 2023, in a special education setting, primarily provided by a special education teacher:

- Social-emotional/Behavioral: 60 minutes daily
- Math: 30 minutes daily

- Reading: 30 minutes daily
- Writing: 20 minutes daily
- Communication: 30 minutes/2 times weekly (provided by SLP)
- Fine Motor: 40 minutes monthly (provided by OT assistant)

The IEP also included the following related services and supplementary aids and services:

- Additional Adult support: 220 minutes daily (provided by a paraeducator)
- Self-Contained Behavior Intervention Program: 225 minutes daily
- Paraeducator: 55 minutes daily (general education setting)
- Paraeducator: 35minutes/2 times weekly (general education setting)

The Student was on a shortened school day schedule from 8 am–12:40 pm and his total minutes per week in school were 1,400 minutes and 1,195 minutes per week were provided in a special education setting. The percent of time in a general setting was 14.64% and LRE placement in general education classes was 0–39%. Transportation was marked “special”, and the ERP was marked “yes”. The Student had additional adult support throughout the day, and he received his services within the self-contained behavior intervention classroom.

12. A PWN, dated November 15, 2022, stated, in part:

We are proposing to increase [Student’s] day to 8am instead of 8:30 which would increase his day by 30 minutes, the team was in agreement. We also proposed including [Student] for library in addition to PE with his general education peers. The team was in agreement.

...

The team rejected increasing [Student’s] day more because [Student] is still having several incidents of running.

13. On November 16, 2022, the District completed a functional behavioral assessment (FBA) (the consent for this FBA was not signed until January 4, 2023) and developed a BIP for the Student. For this new BIP, elopement was one of the targeted behaviors. The BIP noted there was a difference in facilities between the Student’s previous district and present District, so the changes to the old BIP were in part to re-direct the Student in ways and to places that worked in the present District. The FBA included:

[Student] was referred for a ... (FBA) by his ... school team due to a pattern of disruptive behaviors that interrupt classroom instruction and his own learning by engaging in a variety of behaviors that include but are not limited to elopement, refusal, physical aggression towards people and objects, and verbal aggression/inappropriate language. His problem behaviors most often consist of running away, hiding from staff, and refusing to comply and meet school expectations. These behaviors have increased in frequency, duration, and intensity.

...

Student is attending half (8:10-12:40) and working with the Behavior Intervention Special Education teacher with additional para support.

...

A functional assessment revealed [Student] engages in escape behaviors he does not want to participate with a non-preferred task/activity/demand. The escape behaviors are maintained when he receives adult attention and is successful at escaping non-preferred tasks/activities.

...

Alternative Skills to be Taught: [Student] struggles with using appropriate strategies to communicate his need to escape a non-preferred task/activity/demand. Teaching [Student] how to request a break when he needs to escape and how to use an appropriate coping strategy when he is upset will help reduce maladaptive behaviors.

Plan for Antecedents/Environmental Changes that will increase the replacement behaviors and decrease the interfering behavior: When [Student] want to escape a non-preferred task/activity/demand, he will engage in one or more disruptive behaviors ... To minimize the onset of these behaviors, [Student's] teachers can do regular check-ins with him to see how he is feeling and remind him to respectfully request to take a break ... These reminders and practicing appropriate coping strategies will help him minimize the likelihood of [Student] engaging in disruptive behaviors.

14. The record shows that the teacher wrote daily behavior report cards for the Student for about 60 school days from August 29, 2022, until and including December 7, 2022, and sent them home daily in the Student's backpack. The Family knew about these behavior report cards. According to the teacher, the Student made regular threats to kill the teacher and Family. The teacher was told by the Family that this is how the Student communicates. The behavior report cards from September 21, October 10, and November 16, 2022 documented that the Student said, "I am going to kill myself." The behavior report card from September 27, 2022 stated, "[Student] threatened to kill a teacher and have her as his first victim." The behavior report card from September 28, 2022, provided that the Student "attempted to jump off the stairs and kill himself."
15. The Student's daily behavior report card from December 7, 2022 documented that the Student stated, "I'm going to kill myself with a knife and bring it to school." According to the teacher, she called the Family for this incident because it was out of the Student's normal conduct for him to mention a weapon. The teacher stated that the Mother was at home, but the Aunt was out of state.
16. On December 8, 2022, the District's emergency expulsion records provided, in part:

On Wednesday, 12/7/2022, [Student] had multiple escalations. During these, he stated he wanted to kill himself and that he was going to bring a knife. These types of statements are common when he is escalated and aside from trying to climb the stairway rail/wall, he has never acted on these statements.

On Thursday, 12/08/2022, [Student] escalated on his way to Library. He ran back to the classroom and stated 'I'm getting my knife from my backpack.' Staff physically restrained him and removed the backpack from his possession. After securing [Student] in the time-out room, a visual inspection of his backpack resulted in finding a 5" kitchen utility knife.

[Executive director], [Student's] mom, and the ... Wise team were called to the building...Wise Team determined that a Crisis Response was warranted and called for one. The CRP interviewed [Parent] and [Student] separately and determined that [Student] needed to be transported to the hospital for further evaluation. As they were leaving, the CRP reported that [Student] had a 'hit list' that included family and at least one student at [school], but she didn't know that student's name.

17. On December 8, 2022, the Student was admitted to the emergency room of a hospital.
18. According to the Family, they did not receive any communication from the District between December 8–16, 2022. December 16, 2022 was the final school day before winter break.
19. On January 4, 2023, a disciplinary manifestation determination meeting was held, and it was determined that the “conduct in question was a manifestation of the student’s disability.”

20. A PWN, dated January 4, 2023, stated:

The district proposes to change [Student’s] IEP following a manifestation determination held 1.4.23.

...

1. The state of [Student’s] mental health is being evaluated by a child psychologist through ... Hospital. The team has agreed his safety and the safety of others to change his educational placement to be outside of his regular school building, in a more restricted setting.

2. There is sufficient evidence to support a determination that his behavior was a manifestation of his disability on account of his genetic diagnosis (can cause impulsivity and anger/aggression) and special education category (Health Impairments).

...

The team agreed that [Student’s] LRE on his IEP will need to be amended.

21. On January 4, 2023, the Student’s IEP was amended without reconvening the IEP team to address services while the Student was hospitalized. The Student’s IEP provided the Student the following SDI from January 9 through April 24, 2023, in a special education setting, provided primarily by a special education teacher:

- Social-emotional/Behavioral: 8 minutes daily
- Math: 7 minutes daily
- Reading: 8 minutes daily
- Writing: 7 minutes daily
- Communication: 0 minutes/2 times weekly (provided by SLP)
- Fine Motor: 0 minutes monthly (provided by OT assistant)

The Student was to receive 30 minutes per day of SDI in an alternate setting and his total minutes per week in school were 1,400 minutes and 150 minutes per week to be provided in a special education setting. The percent of time in a general setting was 89.29% and LRE placement in general education classes was 0–39%. Transportation was marked “special”, and the ERP was marked “yes”.

22. A second PWN, dated January 4, 2023, stated:

We are proposing to change [Student’s] IEP and educational placement based upon his long-term expulsion and hospitalization.

...

[Student] is currently expelled and is hospitalized. The team proposing to provide services to [Student] in a modified manner while he is hospitalized.

...

The team considered and rejected the option of continuing speech and occupational therapy while in the hospital.

...

Parents declined those services while in hospital. We stand ready to provide those services, albeit in an alternative manner, should you choose to access them.

...

When [Student] is released from the hospital and/or his expulsion is converted to a long-term suspension the team will meet to develop a plan for services while in an interim alternative education setting.

This plan was developed during Student's manifestation determination meeting.

23. A third PWN, dated January 4, 2023, stated, "District is proposing to implement a...BIP for [Student] as part of the...FBA that was conducted November 2022...[The Student] is displaying maladaptive behaviors that disrupt his learning and the learning of others."
24. On January 5, 2023, District records entitled "Notice of Disciplinary Action" provided as follows:  
Conference Held with Student on 01/04/23.  
Based on the outcome of the Manifestation Determination meeting, the Emergency Expulsion in place has been converted to a 10 day Out-of-School Suspension. [Student] continues to be hospitalized in the Emergency Department ...While there, the school will provide educational services via a daily Zoom and access to web based curriculum. Upon discharge from the hospital, the Special Education team, including the family, will meet to determine a suitable 45-day Interim Alternative Education Setting. (IAES)
25. According to the District's attendance records, the Student was suspended on December 8, 9, 12-16, 2022, and January 3-5, 2023. The Student had excused absences for January 6 and 9-11, 2023.
26. On January 10, 2023, the teacher went to the hospital to set up the Student's computer with all its logins and could not connect to the hospital network. The teacher contacted the District's information technology department, and they went to the hospital to help set up the computer. The teacher also delivered schoolwork for the Student.
27. On January 11, 2023, the Student attended his first class online for 30 minutes using Zoom.
28. During the time the Student was in the hospital, the executive director and principal had a telephone conversation with the Student's tele-psychiatrist, and she stated the Student was an extreme danger to himself and others and could not ensure his safety and the safety of others at this time.
29. On January 12, 2023, the Student was discharged by the hospital. The Student's 45 school days of interim alternative educational services (IAES) began. During this time, the Student went to the District for an evaluation, attended his Zoom class, and did homework.

30. Over the next two weeks in January 2023, the Student attended his Zoom class daily. WISE personnel or the Family helped the Student access his computer. WISE personnel visited the Student two hours a day.
31. On January 18, 2023, the Student's IEP was again amended. The Student's IEP provided the Student the following SDI from January 24 through April 24, 2023, in a special education setting, provided primarily by a special education teacher:
- Social-emotional/Behavioral: 30 minutes daily
  - Math: 60 minutes daily
  - Reading: 30 minutes daily
  - Writing: 15 minutes daily
  - Communication: 20 minutes/2 times weekly (provided by SLP)
  - Fine Motor: 30 minutes/2 times monthly (provided by OT assistant)

The Student's total minutes per week in school were 730 minutes and all of them were in a special education setting. The percent of time in a general setting was 0% and LRE placement in general education classes was 0–39%. Transportation was marked "special", and the ERP was marked "yes".

32. A PWN, dated January 18, 2023, stated, in part:
- We are proposing to amend an IEP and educational and placement for [Student].
- ...
- [Student] is currently in a 45 day IAES due to a weapons violation and subsequent long-term suspension.
- ...
- a) Considered and rejected parent/guardian request to have a 1:1 teacher in home or location outside of home.
- b) Considered and rejected parent/guardian request to have [Student] receive peer interaction during IAES.
- ...
- a & b) rejected due to safety concerns of staff and students.

33. Meeting notes from January 18, 2023 documented that the Family wanted services from the OT and SLP, wanted services in the classroom (not at home), and was looking at mental health placements for the Student. The notes also indicated the team discussed a teacher coming into the home, peer interaction, the WISE team support, and that the Student would be moving to another state over the summer.

34. On January 20, 2023, the teacher received an email notification from the math website Prodigy that the Student had attempted 18 skills from January 13–19, 2023.

35. On January 22, 2023, the Family emailed the District:
- [W]e are formally rejecting [Student's] amended I.E.P. as it is written. Specifically, we are rejecting the proposal that he serve his 45 day IAES at home rather than an educational setting. An Interim Alternative Education Setting is not where the student lives, it is an educational setting. While I do not condone what he did, it would not have happened had his teacher made a phone call or email stating he threatened to bring a knife to school.

Regardless, we are at this stage now and he needs to continue his education. This does not mean sending packets home to be taught by his mother or aunt. At this point his behavior is being rewarded, he is getting exactly what he wants, no school. We need to work together to change this behavior, not reward it. I look forward to hearing from you with an acceptable solution for everyone involved.

36. Beginning on January 24, 2023, the Student's schedule was:

- Math: Boddle (30 minutes online)
- Math: Prodigy (30 minutes online)
- Reading: Reading Rangers (30 minutes online)
- Read: Epic (15 minutes online)
- Writing: Practice handwriting (15 minutes)
- SEL (30 minute Zoom class)

The Student's schedule also included weekly Zoom meetings as follows:

- SEL: Daily, 11:20–11:50
- Speech on Tuesday (10:25–10:45) and Thursday (9:55–10:15)
- OT every other Friday

In their April 25, 2023 interview, the Family confirmed that the schedule above began on January 24, 2023. The Family and WISE personnel (for two hours a day) were helping the Student with his education. According to the Family, on January 31, 2023, the SLP began working with the Student and beginning on February 6, 2023, a paraeducator was provided online to work with the Student.

37. On January 31, 2023, the Student's IEP team met again. The January 31, 2023 IEP contained the same minutes of SDI, minutes per week of instruction, and setting/placement as the January 18, 2023 IEP.

According to the meeting notes from the January 31, 2023 meeting, the team discussed the Family wanting in-person learning, which was rejected by the District due to safety. The Family requested a live person via Zoom the entire time of the Student's daily learning. The District agreed to provide a paraeducator during academics, the exact schedule to be determined.

And the PWN, dated January 31, 2023, documented the following decisions made at the IEP meeting:

- a) We are proposing to amend [Student's] IEP to change the method of delivery for his academic instruction minutes...
- b) We are also proposing to initiate a reevaluation.
- ...
- a) [Student's] previous IEP provided for instruction by the special education teacher, the team agreed to change the instruction to live virtual instruction (previously a combination of live virtual instruction and online programs) by special education staff developed and monitored by a certified special education teacher.
- b) ...The team determined a reevaluation was necessary to consider the results of this outside evaluation and thoroughly evaluate his needs...

...  
The team considered and rejected parent request to return [Student] to school.

...

[Student] is currently in a 45 day IAES due to behavioral incident involving a dangerous weapon on December 8th, 2022 in accordance with WAC 392-172A-05149. [Student's] hospital discharge paperwork indicates he is not safe to return to school. The team is using his time in the IAES to explore placement solutions following the end of the 45 days, or sooner if possible. This language was clarified, based on discussion during the meeting, on his IEP to reflect that the IAES is not a suspension or expulsion.

...

A review of [Student's] Manifestation Determination paperwork, hospital discharge paperwork, parent input, and teacher input were used as a basis for this action.

...

During the meeting parent/guardians expressed the desire to seek dispute resolution options. Assistance was offered in that process, but declined. Procedural safeguards were offered and declined.

On January 4th, 2023 the team determined that December 8th incident was a result of his disability. His FBA and BIP were reviewed at that time and the team determined it was not necessary to conduct a new FBA or BIP and both were current and relevant.

38. A PWN, dated February 1, 2023, stated, in part:

District proposes to continue [Student's] eligibility under the category of Health Impairments.

...

The purpose of this cognitive assessment was to establish a FSIQ (full scale IQ) for placement in a facility better suited to meet [Student's] significant behavioral needs. The assessment was initiated at the request of the parent. The cognitive assessment results do not change [Student's] qualification category or the identified services.

...

The full scale IQ was needed by an outside agency to establish eligibility for admittance to their program. [Student] is currently in a 45 day Interim Alternative Educational Setting (IAES) of online instruction provided by school district and appropriate personnel.

39. On February 2, 2023, the District sent the Family the following email, "The recently completed Assessment Revision and IEP Amendment are attached to this email. Additionally, I have included the request for Consent to Reevaluate. As this is an early reevaluation, we are unable to commence assessments until we have your permission in writing."

40. On February 3, 2023, the Family emailed the District:

This morning [Student] is asking for math minutes assistance and word assistance today, can this be accommodated today? [Student] got up early this morning and did some of his online school work. He has counseling services from 0900 to 1000 and then in office appointment with...his WISE care coordinator from 1000 to 1100. The WISE team isn't doing a home appointment this morning. [Student] will sign in at 1120 for ESL class. Any assistance would be greatly appreciated. I look forward to hearing from you today.

41. On February 7, 2023, the Family emailed the District, as follows:

Yesterday, [Student] was having severe issues logging into school for online educational services. His Teacher...tried to assist, but to no avail. She told [Student] that he needed to call Tech support. Do other students within the school district call tech support during

school hours, or does someone at school do that for them? [Student] is a 10yr old minor...[with] multiple severe learning disabilities, behavior disorders, and he cannot READ above a .5 grade level. Not to mention his Speech disorder. He will not pick up a phone to call IT support, not unless other elementary students are doing this; conducting educational support business on their own behalf.

[Student] is on an IEP for severe learning, communicating, behavior issues coupled with Occupational Therapy and is supposed to be receiving 730 minutes a week according to his IEP. At the I.E.P. meeting held on Tuesday 31 January 2023, it was agreed upon that [Student] would have a Paraeducator assigned to him for no less than 730 minutes per week to assist him with his online learning, this has not happened as of yet. Why?

[Student], for the most part, has a desire to PLEASE. He will often say anything to please his teachers, even if he doesn't know how to do something or he isn't obtaining what is being taught because it is what they want to hear. [Student] got really frustrated this morning which brought him to an emotional level to cause tears and agitation. This placed me into a heightened state of negative emotions.

...

I had to calm [Student] down and become the IT tech support to address his trouble ticket of not being able to use the computer services and assist him into his online school appropriately. If I had not logged him into his computer, he would not be attending online learning. I had to be his teacher's aide and organize his learning materials in such a manner to ensure he has the ability to receive the minimal educational services. How is the school district going to accommodate [Student's] through his IEP so he can learn to the best of his abilities in accordance with FAPE? How is the school district going to accommodate [Student] when he goes into crisis mode when he gets frustrated because he cannot appropriately use the school laptop without 1 on 1 assistance in person?

Who's going to assist [Student] in reminding him about his complex weekly school schedule. [Student] has a break from 0930 to 1050. This is 80 mins of unanswered learning on Monday, or is this the time [Student] is supposed to be logged into Prodigy, Boddle, and EPIC. [Student] is currently being unsupported by a certified and trained employee of the school district, in those areas of his education. The WISE team does not solely accommodate [Student], they have other clients in the community, [Student] has appointment times with WISE mental health and emotional regulation support assistance, they are not a tutoring service.

How are we, and the school district, going to come up with an appropriate solution for [Student] to receive a proper education as other students and meet the requirements of his IEP? Again, our home is not an appropriate IAES setting.

42. The Family continued to write detailed summaries about the Student's daily online education and emailed those summaries to the District on: February 7, 9, 10, 14, 15, 17, 21, 22, 23, 27, and March 1, 2023.

43. On February 14, 2023, the principal sent the family the following email:

I checked [Student's] schedule to make sure we are meeting the IEP minutes and to clarify why there is a break between 9:30 and 10:50.

[Student's] current schedule is as follows:

He has 730 minutes a week for his IEP services.

Math –60 minutes a day from 8:10–9:10

Writing –15 minutes a day from 9:15–9:30

Reading –30 minutes a day 10:50–11:20

SEL – 30 minutes a day 11:20–11:50

Speech T – 10:25-10:45 Th-9:55–10:15

OT Every other week on Wednesday 2/8, 2/22. 3/8, 3/22

The daily break between Writing and Reading is so that Speech and OT services can occur without interrupting his other service times.

44. On February 20, 2023, the Family emailed the District, again raising concern that the home was not an appropriate setting for the Student and that “virtual school in a home setting has not provided him with FAPE.”

45. On February 10 and 21, 2023, the District contacted the Parent about academic testing for the Student’s evaluation and sent times that the District was available.

46. On February 22, 2023, the Family emailed the District:

...please help me understand why there isn't one teacher, para educator, principal, substitute teacher or anyone that could provide Virtual Online school this morning to accommodate [the Student] this morning. My cell phone has not been working correctly this morning. I have a home phone, his mother ... has a phone and we have email. Calling minutes before and leaving a message [the Student's] online school is supposed to start but it cannot be conducted due to lack of human resources is unacceptable.

The principal replied:

I agree, a few minutes notice is really poor form. Unfortunately we didn't know the extent of the staffing issues until very close to 8:00 am. I spent several minutes trying to come up with an alternate plan, and, when I determined I didn't have the resources, I tried to call you. Whether it was your phone or mine, the call didn't go through. I sent a text message follow up and then tried to call again a few minutes later, this time leaving a voice mail.

In the midst of several issues, I did not think to look for another phone number for you or to call [Parent's] phone - I've always been able to reach you on your cell phone. I am working...to find a solution and to provide [Student] the services he missed out on this morning.

I understand how difficult this situation is for [Student], you and your family. I will endeavor to maintain his schedule to the best of our ability and will try to communicate any interruptions in a timely manner.

47. On February 23 and 27, 2023, the District emailed the Family about setting up a time for the Student’s occupational therapy evaluation and remaining academic testing.

48. On March 2, 2023, the District emailed the Family as follows, “[SLP] is out today. There will be no speech...today.” The Family responded: “This the second incidence of not being prepared to educate the [Student] in accordance with FAPE when a situation arises.”

49. On March 9, 2023, an internal District email was sent, "The service location will move from the home (IAES) location to a...[alternative educational setting] (AES) setting with his 1:1 aide providing services in person. Safety continues to be a concern and [AES] will serve as the alternate setting as [school] is deemed risky due to past behaviors and targeting student."
50. On March 17, 2023, a meeting was held between the Family and District to discuss the Student's transition to in-person learning.
51. Progress reports, dated March 20, 2023, provided as follows:

<b>Date of Review</b>	<b>Goal Area</b>	<b>Progress</b>
1/20/2023	Math	Sufficient progress
1/20/2023	Reading	Sufficient progress
1/20/2023	Writing	Emerging skill
1/20/2023	Social-emotional/Behavioral	Insufficient progress
1/17/2023	Fine Motor	No instruction
1/26/2023	Communication (phonological process)	Emerging skill
1/26/2023	Communication (syntax)	Emerging skill

52. On March 20, 2023, the Student's IEP was amended. The Student's IEP provided the Student the following SDI from March 22 through April 24, 2023, in a special education setting, provided by a special education staff:
- Social-emotional/Behavioral: 240 minutes daily
  - Math: 60 minutes daily
  - Reading: 30 minutes daily
  - Writing: 15 minutes daily
  - Communication: 20 minutes/2 times weekly (provided by SLP)
  - Fine Motor: 30 minutes/2 times monthly (provided by OT)

The IEP also included 260 minutes per day of "1:1 Adult support" as a related service. The Student's total minutes per week in school were 1,200 minutes and all of them were to be provided in a special education setting. The percent of time in a general setting was 0% and LRE placement in general education classes was 0–39%. Transportation was marked "special", and the ERP was marked "yes".

According to the teacher, because the Student had threatened another student on December 8, 2022, the Student was provided a separate self-contained behavior intervention program. Due to space availability and safety concerns, this program was housed at another school. Additional adult support was provided on the bus in addition to the classroom.

The Student had a BIP, ERP, and "Student Safety Plan" that included the Student being searched in the morning by the Parent before boarding the bus, upon arriving at school in the school security office, and securing the classroom for items that may be weaponized.

53. A PWN, dated March 21, 2023, stated:

We are proposing to initiate an IEP, behavior intervention plan (BIP), emergency response protocol (ERP), Student Safety plan, and educational placement for [Student] as discussed as an IEP team at his meeting on 3/20/2023.

...

[Student] has been in an IAES, the team met to develop a plan for his return to in-person schooling.

...

(WISe Care Coordinator) is planning to attend school with [Student]. The exact days/times are subject to change depending on his availability. The district welcomes this support, however, we are prepared to serve [Student] in his absence.

...

A weekly friendship group with peers is scheduled, and is included in his 1200 minutes per week schedule.

54. On March 21, 2023, the Family filed special education community complaint (SECC) 23-38 with OSPI. The Family's complaint alleged in part that the District failed to:

- Provide the Student his IEP's educational services while he was hospitalized.
- Meet the Student's weekly minutes allocated in the IEP.
- Adhere to the Student's IEP by providing additional adult support specifically dedicated only to the Student at the beginning of the school year.
- Provide substitute service providers familiar with the Student's IEP when his regular service providers were absent.
- Appropriately supervise the Student's paraeducator.
- Provide qualified or licensed educational support personnel to assist with the Student's IAES.
- Appropriately deal with the Student in his online classes when the Student was in crisis mode because when this happened, the teacher would either kick the Student out of the online room or mute him.
- Provide technology support.
- Accommodate the modified general education curriculum productively.
- Have an educational positive impact on the Student's social-emotional learning to progress toward meeting the IEP's behavioral goals.
- Implement the Student's educational services based on the quality of the education instead of strict time constraints.
- Provide an appropriate interim alternative educational setting in accordance with IDEA or FAPE on school property and not the Family's home.
- To reach consensus with the Family on the Student's IAES location.
- To take the Student's December 7, 2022 threats seriously and did not document the Student's threat, or notify the Family of the December 7, 2022 threat.
- Follow the BIP when the Student was in crisis mode.
- Provide a meeting regarding the FBA and BIP from November 16, 2022 that was separate from the January 4, 2023 manifestation meeting.

55. March 22, 2023 would have been the 45-school day of the IAES.

56. On March 22, 2023, the Student began his placement at a District building. The executive director sent the Family the following email:

The check in was a little rough. As discussed in his safety place, when he arrived at school we will ask him to show that his pockets are empty and that he has not brought anything

dangerous with him. He became upset and used foul language...Please remind him that he is not in trouble but his plan requires that we make sure that he is safe.

57. On March 23, 2023, the executive director emailed the family as follows, "Thank you for your support. [Student] had an awesome entry. Your help is appreciated! He came in pleasant and complied willingly."

58. On April 3, 2023, the District submitted its response. Regarding the case's first issue, the District responded in part:

During the 2022-2023 school year, the District has been appropriately implementing [Student's] individual educational program (IEP), including the [Student's] behavior intervention plan (BIP). [Emphasis in original.]

[Student's] transfer IEP (April 25, 2022) and BIP (May 13, 2022) from...[another in-state] district was in effect on August 29, 2022.

...

[The] District rejected the IEP because [it]...was found to be out of compliance.

Regarding the second issue, the District responded in part:

[The District] did follow procedures to determine and provide an appropriate interim alternative educational services (IAES) placement for [the Student]. [Emphasis in original]

Considering...[Student] has a long-detailed history of making suicidal and homicidal threats exacerbated the fact that [Student] now acted upon his verbalized threats and brought a weapon to school. Thus, [Student] was placed in an Interim Alternative Educational Setting (IAES) in accordance with WAC 392-172-05149 under 'Special Circumstances'.

...

An IEP meeting was held to discuss parent concerns about [Student's] IEP placement. The team met and updated the 1/18/23 IEP ... The minutes of the IEP remained the same, but the method of delivery was changed to include live support and instruction from special education staff, via Zoom, for the entirety of his scheduled minutes. IEP is scheduled to begin 2/6/23. During the IEP meeting the team discussed the information received from [the doctor] and decided a reevaluation was needed to appropriately consider the reports as they varied diagnosis and contradict themselves in some areas. The team agreed to a full reevaluation. Written consent for the evaluation was received 2/6/23.

Regarding the third issue, the District responded in part:

The District did not follow procedures to conduct a functional behavioral assessment (FBA) and develop or amend the Student's BIP. The district recognizes that it had several conversations with regards to conducting an FBA with [Student's] family. The family was provided the consent form. Verbal consent was obtained; however, we failed to obtain the written consent prior to conducting an FBA...parental signature was obtained at the meeting. The district will provide oversight by developing checks and balances through the evaluation Team (ET) meeting process to ensure written permission is obtained before any evaluation procedures are begun.

[Emphasis in original.]

An April 11, 2023, email from the executive director stated, "The district is using both a checklist and included it in their annual training. This checklist is overseen by Evaluation Team members and school psychologist."

## CONCLUSIONS

**Issue One: IEP Implementation** – The Family in the present complaint made several allegations regarding the Student's IEP. The Parent's allegations are detailed below in turn.<sup>1</sup>

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

IEP Implementation During a Suspension: The Parent alleged the Student was not provided services while he was hospitalized. During part of that period, the District was on winter break and during part of that time, the Student was also suspended as the Student was emergency expelled on December 8, 2022. That emergency expulsion lasted until January 5, 2023, when the expulsion was converted to a ten-day out-of-school suspension. On January 5, 2023, the Student was on day ten of his suspension.

Regarding suspensions, a school district may not suspend the provision of educational services to a student in response to behavioral violations. 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

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<sup>1</sup> The Family also made several allegations related to how the teacher was conducting her class and how she should have been instructing the Student. Based on Washington state regulations, "the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP." Different teachers implement a student's IEP in different manners and have different instructional styles, but those differences do not automatically establish a violation. As discussed in this conclusion, aside from the services during the suspension, the District materially implemented the Student's IEP.

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.

Regarding the first allegation (educational services during the ten-day suspension), according to the applicable Washington state regulations, the district 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. In the present case, that did not happen. December 13, 2022 was the third school business day after December 8, 2022, and based on an interview with the Family and the District's records, it appears the Family was not contacted for supplemental educational services until January 2023. For this reason, OSPI finds that there is a violation regarding the educational services provided to the Student during his ten-day suspension. Based on this violation, the Student is entitled to compensatory education for ten school days. At the time of the violation, the Student was receiving about 150 minutes per day of SDI based on the Student's November 9, 2022 IEP, which was in effect during the Student's expulsion/suspension.

General IEP Implementation: Regarding the second allegation, the complaint makes a general statement that the Student's IEP minutes were not being met. Based on this case's record, the documentation shows that the Student's IEP services were being provided from the beginning of the school year until December 8, 2022. The Student's educational service during his suspension was just discussed above, thus, the discussion below will cover the period from January 11 until March 21, 2023, when the complaint was filed. Based on the present case's record, while the Family disagreed with some of the IEP amendments/IAES decision and the amount of services fluctuated, the Student did receive his SDI minutes beginning on January 11, 2023, until the complaint was filed on March 21, 2023.

On January 4, 2023, the Student's IEP was amended without convening the IEP team, and this IEP went into effect on January 9, 2023. This IEP called for the Student to receive 30 minutes a day of services. The teacher visited the hospital on January 10, 2023, to make sure the Student could access his services, and beginning on January 11, 2023, the Student did begin to access his services and continued to access his services until his next IEP went into effect. The Student was discharged from the hospital on January 12, 2023, and the District decided that the Family's home would be the IAES.

On January 18, 2023, the Student's IEP was amended to provide for 730 minutes of SDI per week, and this IEP went into effect on January 24, 2023. Beginning on January 24, 2023, the Student's daily schedule was:

- Math: Boddle (30 minutes online)
- Math: Prodigy (30 minutes online)

- Reading: Reading Rangers (30 minutes online)
- Read on Epic (15 minutes online)
- Writing: Practice handwriting (15 minutes)
- SEL (30 minute Zoom class)

And the Student's schedule included weekly Zoom meetings:

- SEL: Daily, 11:20-11:50.
- Speech on Tuesday (10:25-10:45) and Thursday (9:55-10:15)
- OT every other Friday

In their April 25, 2023 interview, the Family confirmed that the schedule above began on January 24, 2023. The Family and WISE personnel (for two hours a day) were helping the Student with his education.

On January 31, 2023, the Student's IEP was amended again and was scheduled to begin on February 6, 2023. This IEP's SDI service minutes remained the same as they were for the previous IEP. The Family's 11 detailed emails from February 7 through March 1, 2023, show that the District was delivering the IEP services. This is not to say that the delivery of those services was perfect, but the District did not materially fail to provide the Student his SDI services. After March 1, 2023, the record does not show any additional emails, detailing a possible violation of the Student's IEP. Thus, based on the facts just above, OSPI finds no violation regarding the Student's SDI minutes from January 11 through March 21, 2023, when the present complaint was filed.

Additional Adult Support: Regarding the third allegation that the Student's additional adult support was not provided, according to the District, the "transfer IEP that was in place from 8/29/22-10/5/22 did not contain any additional adult support or 1:1 para educator support. The IEP beginning 10/6/22 contained additional adult support (not 1:1)."

Based on the facts of the present case, the District has satisfied its responsibilities regarding the Student's additional adult support. "Additional adult support" is not the same as a dedicated one-to-one paraeducator. According to an April 25, 2023 telephone interview with the Student's teacher, the Student was the only full-time student in the self-contained program at the start of the school year until November 7, 2022. At the beginning of the school year, the program was staffed by the teacher and a paraeducator. Between the teacher and the paraeducator, the Student always had additional adult support. On December 5, 2022, a one-to-one paraeducator was hired for the Student, and that person continues to serve in that capacity. Thus, OSPI does not find a violation regarding the third allegation.

Substitute Staff & Supervision: Regarding allegation four, that substitute staff were unfamiliar with the Student, there is no special education requirement that substitute staff be familiar with a student; although, all staff working with a student should have appropriate access to the student's IEP in order to implement the IEP. Here, the core issue is whether the Student's SDI minutes were being implemented when substitute staff were providing instruction. The discussions above for the first and second allegations conclude the Student received his SDI minutes according to his IEPs. Thus, OSPI does not find a violation under allegation four.

Regarding allegation five, the complaint provides a general allegation that the teacher was not appropriately supervising the paraeducator working with the Student. Other staff, including paraeducators, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff. However, that does not mean a teacher is required to directly supervise a paraeducator every moment the paraeducator is working with a student. In special education settings, paraeducators and teachers work as a team in which teachers provide the direction for the instruction and paraeducators may implement those directions and provide feedback to the teacher. Based on this feedback, the teacher will make adjustments to a student's instruction. Again, as discussed above, while the IEP was not fully implemented while the Student was suspended, the IEP was otherwise materially implemented, indicating the paraeducator was provided appropriate supervision. Thus, OSPI does not find a violation under allegation five.

Qualified Staff: Regarding allegation six, the complaint makes a general allegation that qualified or licensed educational support personnel should have been provided to assist the Student during his 45-day IAES placement. In the present case, the Student was working with the same personnel during his IAES placement that he was working with when he was in the classroom, and the Family raised no objections to their qualifications prior to the IAES placement. There is no documentation in the complaint indicating the staff was not appropriately qualified. The documentation in the complaint does indicate the Family expressed concern that they were not teachers and thus were not the appropriate people to support the Student during the IAES. However, OSPI notes that instruction was being provided by District staff, even if it was in an alternative method (remote/Zoom) and the Family was supporting the Student, not necessarily providing instruction. Thus, OSPI does not find a violation under allegation six.

Online Classes & Technology Support: Regarding allegation seven, the Family expressed in a February 7, 2023 email, "[y]esterday, [Student] was having severe issues logging into school for online educational services." Additionally, in the complaint, the Family expressed that whenever the Student was in "crisis mode" during his online education, the teacher would mute or exit the Student out of the online class.

A teacher's decision to either mute or exit a student out of Zoom who is having a crisis to a degree falls under a teacher's discretion in teaching style and class management. If the same student were having a crisis in the classroom, it is very likely the teacher would take some action to help the student manage their behavior, possibly away from the rest of the class. Further, there is no indication that this occurred on a regular basis. Thus, OSPI does not find a violation under allegation seven.

Regarding allegation eight, the Family stated that the District should have provided technology support while the Student was taking classes online during his IAES placement. Documentation supports that the District did provide the Student technology to access his education. First, the teacher provided the Student with a computer on January 10, 2023, and made sure the Student could login to his computer. Second, the Student's IEP makes no reference to specific technology support despite being amended twice during the 45-day IAES. Third, although there may have been technological problems at times, the main issue is whether the Student was receiving his SDI

minutes as required by his IEPs. For the reasons provided above, the Student was receiving his SDI minutes other than the time during the Student's suspension. And documentation indicates that the District was reasonably responsive in communicating with the Family and working to address these technology barriers. For this reason, OSPI does not find a violation regarding this allegation.

For the reasons stated above, a violation is found regarding the first allegation. Based on that violation, compensatory education for ten school days will be awarded to the Student based on the Student's November 9, 2022 IEP.

**Issue Two: Interim Alternative Educational Services (IAES)** – The Family also alleged their home was not the appropriate location for an IAES placement and that IAES location should be on school property.

School personnel may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district. A student removed to an interim alternative educational setting under this section must: continue to receive educational services that provide a FAPE, so as 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. The student's IEP team determines appropriate services and the interim alternative educational setting.

In the present case, the Student brought a five-inch knife to school on December 8, 2022. Additionally, the Student had made homicidal and suicidal comments frequently while at school. These facts are sufficient to support the District's decision to place the Student in an IAES for 45 days under the applicable regulations.

Although WAC 392-172A-05149 does not provide examples of an IAES, WAC 392-400-610 states: "Example alternative settings include alternative high schools, one-on-one tutoring, and online learning." Whether a child's home would be an appropriate interim alternative educational setting depends on the particular circumstances of an individual case, such as the length of the removal, the extent to which the child previously has been removed from his or her regular placement, and the child's individual needs and educational goals. In the present case, considering the potential for physical danger to others based on what happened on December 8, 2022, and the threats made by the Student earlier during the school year, the decision to make the Family's home the IAES and provide remote instruction was reasonable.

The Family alleged that the decision to place the Student at an IAES was not reached by consensus because the Family objected to the decision. In making its decisions, the IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district'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. Here, the District did that.

While the Family may not agree with the IAES decision, that does not mean that the District failed to follow the proper process in determining the placement.

For the reasons provided above, OSPI does not find a violation regarding the IAES placement.

**Issue Three: FBA/BIP** – The Family alleged that the District failed to take the Student’s threats seriously, implement the BIP, and meet regarding the November 2022 FBA and BIP.

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. An FBA and BIP must be used proactively, if an IEP team determines that they would be appropriate for a child.

The Family alleged the District failed to take the Student’s December 7, 2022 threats seriously, did not document the Student’s threat, and failed to notify the Family of the December 7, 2022 threat.

The record shows that the teacher provided the Family daily behavior report cards for about 60 school days from August 29 until and including December 7. Regarding the December 7 incident, the Student’s daily behavior report card from December 7, 2022 provided that the Student stated, “I’m going to kill myself with a knife and bring it to school.” According to the teacher, she called the Family for this incident because it was out of his normal conduct for the Student to mention a weapon. The teacher stated that the Mother was at home, but the Aunt was out of state. Thus, based on the present case’s facts, the District did notify the Family of the threat.

The Family also alleged that the District did not follow the Student’s BIP when the Student was in “crisis mode”. From the beginning of the school year until December 8, 2022, the Student’s BIP from May 2022 was in effect because the Student’s November BIP was not signed until January 2023. As provided above, the Student often made homicidal and suicidal threats, and on many occasions, had to be restrained or isolated. These behaviors were also taking place in the Student’s previous district and that is why the Student was on a shortened school day in that district and in the present District. However, despite challenges with behavior, based on the record, there are no facts that demonstrate that the District materially failed to implement the Student’s BIP when the Student was in crisis. For example, on December 8, 2022, when the District learned the Student had arrived at school with a knife, the District took all the appropriate steps, including immediately calling the Family and the WISE team and asking them to come to school. The WISE team believed a crisis response was warranted and called for one. Thus, OSPI does not find a violation.

Finally, the Family alleged that on January 4, 2023, it should have been provided a manifestation meeting, and then a separate meeting (possibly on another day) regarding the November 2022 FBA and BIP. As part of a manifestation determination, if the conduct was a manifestation of the student's disability, the IEP team must either: conduct an FBA, unless the district had conducted an 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 BIP, and modify it, as necessary, to address the behavior. Here, the District had recently conducted an FBA and developed a new BIP. There is no requirement to have a separate meeting, and in fact, the regulations contemplate the team reviewing the BIP at a manifestation determination meeting. It appears the Family may have been overwhelmed with what was happening during the January 4, 2023 manifestation hearing, which is understandable, and did not expect to be asked to sign the November 2022 BIP. As such, OSPI suggests that when the parties meet to discuss the compensatory education, they should also discuss the BIP. Despite this suggestion, OSPI does not find a violation because the parties did not have a separate meeting.

However, there is a procedural violation regarding the FBA. The District admitted that it "failed to obtain the written consent prior to conducting the FBA." As such, it was inappropriate for the District to be asking the Family to sign consent for the FBA at the January 2023 meeting, after the FBA had been completed. As a corrective action for this violation, the District has stated it will "provide oversight by developing checks and balances through the evaluation team...meeting process to ensure written permission is obtained before any evaluation procedures are begun." In addition, OSPI will require the District to develop and distribute written guidance to all required staff.

### **CORRECTIVE ACTIONS**

By or before **June 8, 2023** and **September 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **June 1, 2023**, the District will meet with the Family to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Social-emotional/Behavioral: 600 minutes
- Math: 300 minutes
- Reading: 300 minutes
- Writing: 200 minutes
- Communication: 120 minutes (provided by SLP)

OSPI also recommends that the Student's IEP team discuss his BIP and whether it needs to be updated.

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 **June 8, 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:**

By **September 15, 2023**, the District will submit documentation that all required staff received the written guidance on properly obtaining parental written consent, conducting FBAs, and developing BIPs. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 17th day of May, 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.)