

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-86**

### **PROCEDURAL HISTORY**

On June 12, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 14, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 30, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On July 3, 2023, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on July 6, 10, and 11, 2023. OSPI forwarded the information to the District on July 13, 2023.

On July 13, 2023, OSPI received two sets of additional information from the Parent. OSPI forwarded the additional information to the District July 13 and 14, 2023.

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

### **ISSUE**

1. In relation to the December 2022, March 15, 2023, and April 6, 2023 IEP meetings, did the District follow proper procedures under WAC 392-172A-050225 to ensure personally identifiable information on the Student was not shared with non-District individuals?

### **LEGAL STANDARDS**

Consent for Release of Records: Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99. Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of the provision of special education services under Chapter 392-172A WAC. WAC 392-172A-05225(1)-(2).

Evidentiary Weight: According to the Office of Special Education and Rehabilitative Services, "it would not be inconsistent with the IDEA...for a State to use a 'preponderance of the evidence' standard in making independent determinations as to whether a public agency violated a

requirement of Part B of the IDEA." *Letter to Reilly*, 64 IDELR 219 (OSERS 2014). Merriam-Webster's Dictionary of Law defines the phrase "preponderance of the evidence" as "the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not." MERRIAM-WEBSTER'S DICTIONARY OF LAW 377 (1996).

### **FINDINGS OF FACT**

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of other health impairment, was in the fourth grade, attended a District elementary school, and the Student's March 2022 individualized education program (IEP) was in effect.
2. According to the Parent, the "principal [had a] practice during IEP meetings [of] having the camera on at her home with family members in the background."
3. According to the Parent, "In December 2022, we had an IEP meeting [via] video teleconference. The principal participated from home. We could see two of her family members present during the meeting. One of them is a child in our daughter's class. When we asked for privacy, she...turned her screen off."

An email authored by the Parent and dated December 15, 2022, included the foregoing information. The December 15, 2022 email stated the principal's response—when the Parents expressed privacy concerns during the December 1, 2022 IEP meeting—the principal stated she told them, "I keep my meetings in my ear so no one can hear us."

4. According to the District:  
[In regard to the December 1, 2022 IEP meeting], the principal participated in the video conference meeting from her home office, which is a separate room in her house with a closed door. During the meeting, two of the principal's children briefly entered the office to retrieve a tablet or other item, and then promptly left. Parents saw the principal's children during the brief time they were in the office, and expressed concern about their presence. The principal assured Parents that they were unable to hear anything because she was wearing AirPods. The principal wore AirPods for the entirety of the IEP team meeting.
5. In relation to the December 1, 2022 IEP meeting, the Parent's education advocate provided the following statement to OSPI's investigator:  
Parents shared their privacy concerns and requested that the team ensure that all members of the IEP team are in a private space. Most of the members of the team verified and gave this assurance that they were in a private space. The principal stated that she had earbuds in but didn't mention that the meeting is being kept private. I wasn't able to see the earbuds from my view on the screen. This was concerning and the team moved on to discuss our agenda since we only had a limited amount of time to meet as a team.
6. During this investigation, OSPI was not provided with a recording of the December 1, 2022 IEP meeting.

7. On December 16, 2022, the special education director emailed the Parent, offering "to follow-up with the principal regarding [Parent's privacy] concern."
8. According to the Parent, during a March 15, 2023 meeting, "the principal attended for the first hour with her camera on"; for the last "35 minutes of the meeting, [though], she was driving [with her camera off], possibly with her children in the car."

A text message the principal wrote during the meeting read, in part, "I will have to transition to school mid-meeting. I will have my camera off during this transition, as I am driving."

According to the District, "The principal wore AirPods for the entirety of the meeting [and] the principal does not recall whether her children were in the car with her that morning."

9. During this investigation, OSPI was provided a recording of the March 15, 2023 IEP meeting. That recording showed, in part: the principal had an AirPods in her left ear; the principal did not have an AirPods in her right ear; the principal was in her home<sup>1</sup>; the principal did not appear to speak to other people in the room in which she was located, nor did other people appear on the screen; and the principal did not appear to be distracted by other things happening in room in which she was located.
10. On March 28, 2023, several parents of students attending the Student's elementary school wrote a letter to the District superintendent.

In part, the letter mentioned: the principal had a habit of "allowing people who are not members of the IEP team to be present" during meetings; on December 7, 2022, during a meeting involving one of the parent's students, "the principal allowed her child to enter her office repeatedly, [thus] violat[ing] my child's rights to privacy"; certain parents had noticed, during student-related meetings, it appears the principal was "supervising her child or possibly other children"; and one parent noted, "during our child's IEP meeting, we observed two different family members of the principal walk past her and look into the screen during the meeting [and] one of her family members is a child in our child's class."<sup>2</sup>

11. According to the Parent, during an April 6, 2023 IEP meeting, the principal "was at home and not wearing earbuds...to prevent the conversation from being heard [and] we could see that someone was nearby enough to distract her a few times."

In relation to the April 6, 2023 IEP meeting, the District's response read, in part:

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<sup>1</sup> With a half hour remaining in the March 15, 2023 meeting, the principal had to "transition to [the] school."

<sup>2</sup> The March 28, 2023 letter referenced a "required FERPA training that came [about due to] our June 2022 FERPA complaint with the Department of Education." The March 28, 2023 letter alleged, in part, "[T]he required training [does not appear to have] made any difference [in terms of proper procedures being following to maintain student confidentiality]."

The principal does not recall whether she participated in the April 2023 IEP team meeting from her home office with the door closed, or from her office at the school with her door closed.

Any time the principal participates in IEP team meetings from her home office or car, she wears her AirPods.

When the principal participates in IEP meetings from her office at the school, she does not wear AirPods because her office computer does not have Bluetooth. However, she ensures that no one enters the office or is able to overhear discussions.

12. During this investigation, OSPI was provided a recording of the April 6, 2023 IEP meeting. That recording showed, in part: the principal was in her home<sup>3</sup>; the principal did not have an AirPod in either ear; and on numerous occasions, the principal could be seen looking away from her screen and talking to someone else in the room.
13. The District concluded its response by stating, in part, "The District respectfully requests that OSPI issue a finding that the District did not violate the IDEA with respect to the issue raised in the Parent's complaint."

## **CONCLUSIONS**

In relation to the December 1, 2022, March 15, 2023, and April 6, 2023 IEP meetings, the Parent alleged the District failed to follow proper procedures under WAC 392-172A-050225, to ensure personally identifiable information on the Student was not shared with non-District individuals.

Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99.

December 1, 2022

Neither party provided OSPI with a recording of the December 1, 2022 IEP meeting. Accordingly, OSPI cannot determine whether the principal was wearing AirPods during the meeting as the District asserted.

Both parties, though, stated that during the IEP meeting, at least two of the principal's children—who are not members of the Student's IEP team—appeared on the principal's screen.

Even assuming the principal did have AirPods in for the meeting, this would still represent improper procedures under WAC 392-172A-05225(1)-(2), and a violation of the IDEA, as the principal's children could have read personally identifiable information on the Student from the principal's screen. By way of explanation, the recordings for the March 15, 2023 and April 6, 2023

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<sup>3</sup> The principal was at her home for the first portion of the March 15, 2023 IEP meeting. And, for the April 6, 2023 IEP meeting, it appeared the principal was in the same room as she was in for the start of the March 15, 2023 IEP meeting.

IEP meetings both showed the IEP team shared a copy of the Student's draft IEP on their respective computer screens as they discussed it; in other words, it is highly likely the Student's IEP was visible on the principal's screen.

March 15, 2023

During this investigation, OSPI was provided a recording of the March 15, 2023 IEP meeting. That recording showed, in part: the principal had an AirPods in her left ear; the principal did not have an AirPods in her right ear; the principal was in her home<sup>4</sup>; the principal did not appear to speak to other people in the room in which she was located, nor did other people appear on the screen; and the principal did not appear to be distracted by other things happening in the room in which she was located. Based on the foregoing, OSPI does not find a violation of WAC 392-172A-05225(1)-(2).<sup>5</sup>

April 6, 2023

During this investigation, OSPI was provided a recording of the April 6, 2023 IEP meeting. That recording showed, in part: the principal was in her home<sup>6</sup>; the principal did not have an AirPods in either ear; and on numerous occasions, the principal could be seen looking away from her screen and talking to someone else in the room.

This represents improper procedures under WAC 392-172A-05225(1)-(2), and a violation of the IDEA, as the other people present in the room likely heard personally identifiable information on the Student.

To account for both this violation, and the violation related to the December 1, 2022 IEP meeting, certain District staff will be required to attend a training on proper procedures for ensuring the confidentiality of personally identifiable information on students during IEP collaborations and processes.

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<sup>4</sup> With a half hour remaining in the March 15, 2023 meeting, the principal had to "transition to [the] school."

<sup>5</sup> The Parent expressed concern the principal's children were in the car with her during the transition to the school, but there are no contemporaneous communications and/or recordings that support that understanding of events over the alternative—that the principal's children were not present in the car during the transition. Furthermore, even assuming one or more of the principal's children was present in the car during the transition, if the principal had continued to keep an AirPods in her ear, then the Student-related conversation would likely not have been heard by any children present. (Relevant to this determination is guidance from OSEP that stated a stated education agency may use a 'preponderance of the evidence' standard in making determinations as to whether a district violated the IDEA. And 'preponderance of the evidence' is commonly understood to mean a party wishing to establish a factual premise must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.)

<sup>6</sup> The principal was at her home for the first portion of the March 15, 2023 IEP meeting. And, for the April 6, 2023 IEP meeting, it appeared the principal was in the same room as she was in for the start of the March 15, 2023 IEP meeting.

## CORRECTIVE ACTIONS

By or before **August 18, 2023, September 1, 2023,** and **September 15, 2023,** the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

None.

### DISTRICT SPECIFIC:

#### Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-86.

The following District staff will receive training: all District members of the Student's IEP team, including the principal. The training will cover the following topic: proper procedures for ensuring the confidentiality of personally identifiable information on students during IEP meetings, collaborations, and processes.

The training will include examples. By or before **August 18, 2023,** the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **September 1, 2023,** the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 6, 2023.

By **September 15, 2023,** the District will conduct the training regarding the topics raised in this complaint decision.

By **September 15, 2023,** the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this 7<sup>th</sup> day of August, 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.)