

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-98**

### **PROCEDURAL HISTORY**

On June 26, 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 Bethel 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 and Students' education who receive audiology services at a District high school.

On June 26, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 28, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 3, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to July 21, 2023.

On July 21, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on July 24, 2023. OSPI invited the Parent to reply.

On July 28 and 31, 2023, OSPI received additional information from the District and sent the information to the Parent on August 1, 2023.

On August 2, 2023, an OSPI complaint investigator conducted a telephone interview with the Parent.

On August 5, 2023, the Parent submitted a reply to the District's response. The information was forwarded to the District on the same day.

On August 7, 2023, OSPI received additional information from the District and sent the information to the Parent on August 8, 2023.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on June 27, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUE**

1. Per WAC 392-172A-03105, have the Students at Spanaway Lake High School had their individualized education programs (IEPs) implemented properly, specifically audiology or other services from the specific audiologist named in the complaint during the 2022–23 school year?

## 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).

For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200-01 (1982).

## FINDINGS OF FACT

### Background

1. The audiologist's caseload had two students eligible for special education from the high school at issue in this complaint. Those students will be referred to as Student 1 and Student 2.  
2. Student 1 is the Parent's child.

2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



3. On February 9, 2022, Student 1's IEP team met. Student 1's IEP provided for SDI in a special education setting provided by special education staff from February 11–November 17, 2022, as follows:
- Adaptive: 100 minutes/5 times weekly
  - Functional Academic-Math: 84 minutes/5 times weekly
  - Functional Academic-Reading: 80 minutes/5 times weekly
  - Functional Academic-Writing: 80 minutes/5 times weekly
  - Communication: 30 minutes/1 times weekly (performed by a speech and language pathologist (SLP))

Student 1's IEP provided supplementary aids and services in a special education setting in the following area: Audiology (delivered by an audiologist): 10 minutes/1 time monthly.

**2022–23 School Year**

4.   
  
  
  


5. On November 18, 2022, Student 1's IEP team met. Student 1's IEP provided for SDI in a special education setting provided by special education staff from November 23, 2022 to August 31, 2023, as follows:
- Adaptive: 140 minutes/5 times weekly
  - Vocational: 140 minutes/5 times weekly

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<sup>1</sup> In some of the documents reviewed for this case, the sound amplification system is referred to as "DM", which stands for digital modulation. In other documents, the sound amplification system is referred to as "FM", which stands for frequency modulation. Any DM or FM references in this document are based on how it appears in the original document.

Student 1's IEP provided supplementary aids and services in a special education setting in the following area: Audiology (delivered by an audiologist): 10 minutes/1 time monthly.

Student 1's IEP provided for SDI provided by special education staff from September 1, 2023 to November 22, 2023, as follows:

- Adaptive: 170 minutes/5 times weekly (General Education)
- Vocational: 170 minutes/5 times weekly (Special Education)

Student 1's IEP provided supplementary aids and services in a special education setting in the following area: Audiology (delivered by an audiologist): 10 minutes/1 time monthly.

6. On November 18, 2022, the District's audiologist emailed the Parent as follows:

I just wanted to touch bases with you to apologize for not being available at [Student 1's] Eval meeting. Unfortunately, I was not informed that a re-eval was happening, and the meeting was scheduled on a day I was not in district. I am hopeful that I can attend the IEP meeting when it is rescheduled.

In the meantime, I wanted to share what I will be putting in the Eval re: Audiology. The Audiology section rarely changes much as hearing history tends to stay the same, but I did update the model of his new hearing aids.

***[Student 1] has a bilateral, mild sloping to severe to profound, sensorineural hearing loss that was identified at age three months. Hearing aids were recommended at that time. He has been followed at...Pediatric Hearing Center. [Student 1] was initially fit with hearing aids at age 4 years, but there were extended periods of time where he did not use his hearing aids. [Student 1] is currently wearing Phonak Sky M50 SP hearing aids.***

[Emphasis in the original.]

If you have any questions or concerns, please let me know...

7. On November 30, 2022, teacher 1 emailed the audiologist as follows:

At this time, we are not currently using the FM system due to the nature of the classroom. Our work is done 1:1 with him so when instruction is being provided, we are seated next to him and he is adequately able to hear and engage with us with his hearing aids. Have you been out this year for [Student 1]?

8. On December 2, 2022, Student 1's IEP was amended. A prior written notice (PWN), dated December 2, 2022, stated, "IEP needed to be amended due to a word list forgetting to be included in the vocational goal section...Parent gave permission for the case manager to amend the IEP without reconvening the team on 12/2/22."

9. On December 9, 2022, Student 1's IEP was amended again. A PWN, dated December 9, 2022, stated, "Service matrix needed to be adjusted to reflect the double matrix for transition to the Transportation Lab...Parent gave permission via phone 12/9 to amend the IEP to adjust the service matrix and do immediate implementation. Parent gave permission to do so without reconvening the team."

10. On June 26, 2023, the Parent filed a complaint with OSPI that alleged, in part, "that the Students attending...[the] School...whose IEP requires Auditory Services to be evaluated and performed by [the audiologist], have not been receiving adequate Auditory Services as according to their IEP."

11. On July 21, 2023, the District submitted its response to the Parent's complaint. Regarding the allegation regarding audiology services, the District's response stated, in part:

[The audiologist's] role at the District is to review the information from a clinical audiologist and identify the appropriate educational services for the type of hearing loss, if any...For evaluations, [the audiologist] relies on the available information and makes recommendations to the IEP team...She also provides IEP teams with recommendations on the type of services a student who is deaf and hard of hearing (DHH) may need...

[The audiologist] does not provide services directly to students like a special education teacher or a related service provider. Her services are listed as a supplementary aid and services, which is the aid, services, or other supports that are provided to enable children with disabilities to be educated with their nondisabled peers to the maximum extent possible...There is no defined model of what a supplementary aid and service looks like, and instead, the service must be determined by the IEP team to benefit the student. The service may include consultation, access to expertise, or access to targeted strategies...

...[The audiologist] provides her services on a consultative model, working with students and staff to ensure that the student's hearing technology is working.

...Most of her consultation is done by checking the equipment and troubleshooting. She sometimes works with staff to help them troubleshoot, and occasionally she works directly with the student. However, in serving a student it is not unusual for her to work alone on tech issues that have been left to her to address...

In this matter, [the audiologist] worked more frequently with [Student 1] when he was utilizing the FM system to focus his hearing in a group setting...However, during and after the implementation of pandemic safety measures, his teacher implemented a 1:1 learning modality, and he no longer needed [the audiologist's] services to monitor the FM system...Nonetheless, the team left the option of an FM system for his use should he require it as an accommodation...The team then left audiology services on the service matrix should he require support for the FM system...

[The audiologist] also provided support and consult for staff regarding the Student's hearing aids...Hearing aids are not equipment provided by the District and the District is not responsible for repairs, but [the audiologist] assists by helping to troubleshoot hearing aid problems...The Student, however, did not require her assistance as his team was generally able to troubleshoot any problems...If the hearing aids were actually broken, they were taken to the clinical audiologist services at [hospital] for repair...

[The school] has one other student with audiology services identified in the IEP...Similarly, the second student has an accommodations allowing access to an FM system as needed...And similarly, the student has supplemental aids and services for 10 minutes for the maintenance of equipment...[The audiologist] provided her consultative services as needed...

The Parent alleges that not only did [the audiologist] not provide any services to her son, but to all other students on her caseload at [the school]. The Parent makes this allegation based on conjecture that she heard and the lack of [the audiologist's] availability for...evaluations and IEPs without any understanding of how an educational audiologist works and provides services.

[The audiologist's] services meets the requirements under 34 CFR 300.42 and allows the Student to make progress toward his IEP goals. Although the Parent may have never met her, the nature of [the audiologist's] services means that she typically does not work directly with the Student. The scope of her services is heavily dependent on the age and ability of the student as well as the equipment being used. Additionally, [the audiologist's] services may not be directly for the student. Instead, her services may be to answer questions for other services providers, train other services providers how to troubleshoot, or do those tasks on her own.

Although the District denies the Parent's allegation, the District recognizes that better communication with parents may be needed regarding what role each IEP team member plays, as well as how those services are provided. To that extent, District Director of Secondary Services...has spoken with the Parent to explain the differences between an educational audiologist and a clinical audiologist, and how those services are provided.

The District is also willing to train its IEP team members to better communicate their roles and the roles of their counterparts during the IEP meeting should a team member be unable to participate. This is to ensure that parents are aware of the team members' roles, how those roles support the student, and provide any clarification that they may need.

12. Teacher 1 provided a declaration signed on July 29, 2023, as part of the response. Teacher 1 is a special education teacher in one of the District's self-contained settings. The declaration stated, in part:

- I have been Student 1's teacher since the 2019–20 school year.
- During the 2019–20 school year, Student 1 required an FM system to hear the speaker clearly in a group setting.
- During the pandemic, I used 1:1 instruction with Student 1 and I continued the 1:1 instruction following the lifting of all safety protocols and restrictions related to the pandemic.
- In a 1:1 instructional setting, Student 1 is able to use a hearing aid effectively because there is no background noise that needs filtering. I know that he can hear me well because he is responsive to my instructions and my questions...
- Student 1's hearing aids sometimes do not work because he likes to play with them. Normally, my paraeducator...and I are able to replace the batteries and make minor repairs.
- I did not need to consult the audiologist during the 2022–23 school year because Student 1 was not utilizing his FM system, although we ensured that he always had access to it on his IEP as an accommodation.
- Overall, Student 1 has done very well in school. His communication abilities have expanded...He is making progress toward his goals.

13. Teacher 2 provided a declaration signed on July 27, 2023, as part of the District's response. Teacher 2 is a special education teacher in one of the District's self-contained settings. The declaration stated, in part:

- I am Student 1's "personal care provider" after school through another state agency.

- Student 1 also has hearing loss that requires he wear a hearing aid. His mother gets the hearing aids from [hospital] Children's Audiology. His hearing aids work well and he is able to hear when I talk with him in close proximity, such as when working with him 1:1.
- I know he can hear me because he is responsive to what I am saying...For example, we were sitting next to each other at the kitchen table, when I was talking to you about how he likes to play with his hearing aid batteries, he laughed in response. He is also responsive to questions about needs and preferences.
- Student 1 did have an FM device to augment his hearing for group instruction at school. I work across the hall from teacher 1 where Student 1 is a student. During the 2019–20 school year, our classes would combine in the mornings for a group instructional activity. Student 1 used the FM device to be able to hear the speaker in the group setting and filter out background noise.
- Now Student 1 relies more on his hearing aids. Student 1 likes to play with his hearing aids, and used to take them out of his ear. He did this so frequently that at one point, the IEP team created a goal to teach him how to independently put in his own hearing aids.
- Student 1 especially likes taking the batteries out and playing with them before he's supposed to put them on. He is able to open the battery compartment and take the batteries out. He attempts to put new batteries in by himself but often needs help putting them back in correctly.
- If Student 1's hearing aids are not working or if he needs help, he will communicate his needs by using his AAC device. It has a button for 'I need help with my hearing aids.'
- On two occasions in the last three years, the hearing aids were broken and the repair was beyond my ability.
- I was not aware what an educational audiologist does, but I have since learned their role and function. I now understand that the audiologist provides support with the equipment that students who are deaf and hard of hearing require to access their education in the school setting, such as making sure the FM system works and the hearing aids are working.

14. The audiologist provided a declaration, signed on July 29, 2023. Regarding her job generally, she stated, in part:

- My role as an educational audiologist is to review the information from a clinical audiologist who identifies the type and extent of the hearing loss.
- The educational audiologist reviews and relies on the information provided by a clinical audiologist, such as the type and severity of the student's hearing loss, whether the student requires a hearing aid, and whether the student requires an amplification system such as a frequency modulation (FM) or digital modulation system (DM).
- I do not prescribe hearing aids, and Districts do not provide or pay for hearing aids. Instead, hearing aids are obtained by parents.
- A student's hearing loss is typically stable, meaning that there is usually no significant change that alters an audiologist's determination of eligibility for audiology services. If an updated report is provided, the audiologist will note that an updated report is provided, but typically the evaluations reflect minor, if any, changes.
- I do not conduct my own norm-referenced assessments, like other service providers. Instead, I reflect the information from the clinical audiologists, so the information in my portion of educational evaluations can sometimes look similar because little to nothing has changed in terms of the student's hearing status. Often, I do not receive new information from the parent, such as new audiology exams.

- My services are geared toward ensuring that the student's technology works and are typically identified as supplemental aids and services because I provide consultation services for the student. These consultation minutes are typically discussions with other staff members, but sometimes directly with the students, depending on the situation.
- I do not provide direct instructions to the student, and I do not provide related services or work toward goals.
- An FM/DM system is not needed when a student is working in a 1:1 setting as the student's hearing aids will allow the student to hear the individual speaker.

Related to Student 1, the audiologist's declaration provided:

- In this matter, I began working with Student 1 during the 2019–20 school year...He has bilateral mild sloping to profound sensorineural hearing loss identified at three months old.
- When Student 1 returned to school for in-person instruction during the 2021–22 school year, he no longer needed his FM/DM system as his hearing aids worked well in a 1:1 setting. The ILC classroom continued to utilize the 1:1 model during the 2022–23 school year; therefore, the Student continued to simply rely on his hearing aids.
- As Student 1 no longer utilized an FM system, I no longer provided that monitoring consultation service under his IEP. However, we continued to make the FM system available under his IEP as an accommodation. Should the classroom resume group instruction and he needed the FM system again, I would be available to monitor again. Hence my service minutes continue to be included even though my services are not needed for the FM system.
- Although Student 1 also had hearing aids, his educational team knew how to address the primary trouble shooting the hearing aids.
- There was one time that Student 1's team could not figure out what was wrong. I received a message and went to the ILC-2 classroom. Student 1's was not there, but I talked to the SLPA about what may be causing the issue. She said she would troubleshoot when Student 1 was back in school and would let me know if there were any further problems. I did not hear from her further. His team did an excellent job ensuring that his hearing aids worked.

15. On August 5, 2023, the Parent submitted a reply to the District's response that stated, in part: ...at no point in time were Audiology services removed, and most certainly **were not** changed to strictly consultation on an as needed basis. Nor, is it implied in the Audiology portion of the IEP.

[Emphasis in original.]

...

It continues to be my position [audiologist] inappropriately determined Audiology services without conducting any evaluation. [Audiologist] never conducted a re-evaluation of [the Student] depriving him of accessing his education and supportive services.

...

Although required to conduct an evaluation and being invited to every IEP meeting to discuss new information, service providers roles, scope of services, progress and outcomes, [audiologist] failed to attend several IEP meetings which were pertinent to my students education and ascertaining whether the proposed Audiology services were appropriate; thus hindering every IEP team members ability to best support [Student 1] educationally and participate in creating a well developed [IEP]. During discussing provider absences, I've specially stated wanting every IEP team member to be present and often, when able, rescheduled IEP meetings to best benefit schedules as needed.

...

[Audiologist] has not requested clinical data to rely on. I know this because, it would require me to sign a Release of Information form or deliver it to her or the District.

Moreover, even if I were considering her perspective, at minimum [audiologist] provides no evidence of checking-in with staff monthly in an attempt to check on student progress.

...

It was frustrating for me as a parent because I'd receive frequent phone calls regarding issues with hearing aids and would often have to provide insight/training over the phone. Other times [Student 1] would return home with nonfunctioning hearing aids.

When I inquired about the Audiologist, [teacher 1] stated she had not seen the Audiologist in 2 years and she was not providing services, nor responding to address issues, which is how I became aware of the situation thus filing my complaint.

## CONCLUSIONS

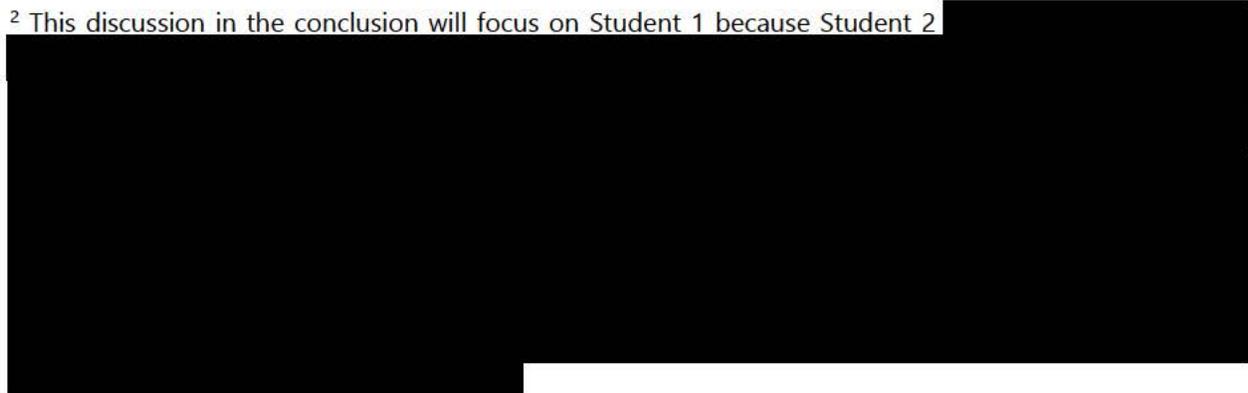
**Issue: Audiology Services** – In her complaint, the Parent alleged that the students “attending...[the] School...whose IEP requires Auditory Services to be evaluated and performed by [the audiologist], have not been receiving adequate Auditory Services as according to their IEPs.” In the present case, there are two students who are attending the school and are the basis of this complaint.<sup>2</sup> Student 1 is the Parent’s child.

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. 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.

To frame the discussion in the complaint, it is important to begin with an understanding of what the audiologist was expected to do under the IEPs in the present case.

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<sup>2</sup> This discussion in the conclusion will focus on Student 1 because Student 2



Student 1's IEPs (and Student 2s), under the section marked supplementary aids and services, provided that the Students were entitled to ten minutes of services by the audiologist per month. As stated in the audiologist's declaration, her main job was to "identify the type of audiology services the student needs and how those services will be delivered." The audiologist was not responsible for providing students direct instruction or working with students on their goals.

In the present case, prior to the pandemic, Student 1's educational services included the use of an FM system, which required the audiologist to make sure the system operated properly so that Student 1 could access his SDI. Since the pandemic, Student 1's education team has not used the FM system. Teacher 1's declaration clearly states that she is using a 1:1 instruction model with Student 1 that does not require a FM system at this time. Additionally, she is sure Student 1 can understand what is happening in the 1:1 instruction model because Student 1 appropriately responds to her when they speak to him.

Teacher 1 in her declaration states, "I did not need to consult the audiologist this year as [Student 1] was not utilizing his FM system." In the present case, the type of auditory system that is used is not as important as whether the students can access their education, and based on the teachers' declarations, Student 1 is accessing his education in a meaningful way, considering his audiology needs.

In her reply, the Parent cites as proof that the audiologist is neglecting her services, the fact that the Parent "received frequent phone calls regarding issues with hearing aids and [that she] would often have to provide insight/training over the phone. [And] [o]ther times [Student 1] would return home with nonfunctioning hearing aids." While this must have been frustrating, this alone is not proof that the audiologist was neglecting her services. Based on the teachers' declarations, it appears that Student 1 frequently fidgeted with his hearing aids. Going into Student 1's most recent IEP, they likely knew of Student 1's habit of fidgeting with his hearing aids. Despite this, only 10 minutes of audiology services were provided per month. This helps establish that the audiologist was not the person primarily responsible for making sure the hearing aids were working. As stated in the teachers' declaration, the educational staff generally handled any problems that occurred with Student 1's hearing aids and when they could not fix the hearing aids, the hearing aids were taken outside the District to be repaired. And the audiologist stated she was called to consult regarding the hearing aids and consulted with the SLP assistant regarding the same.

The Parent also alleged the audiologist never conducted a re-evaluation of Student 1, thus depriving him of accessing his education and supportive services.<sup>3</sup> As was stated in the audiologist's declaration, she is an educational audiologist, not a clinical audiologist. As such, she does not conduct assessments. Instead, she implements technological services based on students' needs as determined by the students' clinical audiologists. Further, the documentation shows that

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<sup>3</sup> OSPI notes this specific allegation regarding reevaluations was not raised in the original complaint. Regardless, OSPI addresses this as it relates to the provision of audiology services.

the audiologist, while she could not attend the reevaluation meeting, did contribute to the fall 2022 reevaluation and updated the information about audiology needs in that reevaluation.

Finally, the Parent's reply stated, "At no point in time were Audiology services removed, and most certainty (sic) were not changed to strictly consultation on an as needed basis. Nor, is it implied in the Audiology portion of the IEP." The Parent is correct that the audiology services remained on the IEP and were not specified as being on an as needed basis. OSPI acknowledges the District needs to do a better job communicating and explaining to all members of students' IEP teams how IEP services will be delivered and the District recognized this fact as well. Despite this, and based on the facts in the present case, the audiologist did provide consultation services as needed and there was not a material failure to implement the Students' IEPs, and OSPI does not find a violation regarding the provision of audiology services.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

As stated in the District's response, the District recognized that "better communication with parents may be needed regarding what role each IEP team member plays, as well as how those services are provided." The District proposed it train IEP teams on ways to "better communicate their roles and the roles of their counterparts during the IEP meeting should a team member be unable to participate. This is to ensure that parents are aware of the team members' roles, how those roles support the student, and provide any clarification that they may need." OSPI recommends the District continue efforts to improve this communication and provided the training it proposed in the complaint response.

Dated this 24th 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.)