

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-20**

### **PROCEDURAL HISTORY**

On February 14, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Enumclaw 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 February 15, 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 February 16, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to March 10, 2023.

On March 10, 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 March 23, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On March 27, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On April 3, 2023, OSPI requested that the Parent provide additional information, and the Parent provided the requested information the same day. OSPI forwarded the information to the District on April 4, 2023.

On April 3 and 4, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on April 4, 2023. OSPI forwarded the information to the Parent on April 6, 2023.

On April 7, 2023, the Parent provided OSPI with additional information. OSPI forwarded that information to the District the same day.

On April 10, 2023, OSPI's investigator interviewed the principal, special education teacher, and classroom teacher.

OSPI considered all information provided during the investigation.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began June 2022 per the allegations in the complaint. These references are included to add context to the

issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Beginning with the 2022–2023 school year, did the District follow proper procedures for implementing the following provisions of the Student’s individualized education program: specially designed instruction in writing, and the accommodation of the Student being sat “near [a] good role model that won’t distract Student from learning”?
2. Beginning in June 2022, and continuing through the present, did the District follow proper IEP development procedures, specifically, did the District follow proper IEP development procedures for responding to any potential need resulting from the Student’s disability in the areas of speech therapy and occupational therapy?
3. Beginning with the 2022–2023 school year, did the District follow proper procedures for responding to any potential bullying the Student was exposed to, specifically, did bullying prevent the Student from accessing a free appropriate public education (FAPE)?

### **LEGAL STANDARDS**

IEP Implementation: 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. A school district must develop a student’s IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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 [child with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student’s parents that describe all of the evaluation procedures that the district intends to

conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Bullying: Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that their IEP is no longer providing educational benefit. (Dear Colleague Letter, 61 IDELR 263).

Harassment or bullying that adversely affects that student's education, may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9<sup>th</sup> Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994).

## **FINDINGS OF FACT**

### **2021–2022 School Year**

1. According to the District, at the start of the 2021–2022 school year, the Student attended third grade at a District elementary school and was not eligible for special education.
2. The District's response included an April 12, 2022 special education referral. It read, in part:  
Student is currently on a 504 Plan because of his attention deficit hyperactivity disorder (ADHD) diagnosis that began in...the fall. Student has been getting outside tutoring since March and is making progress.  
...  
Written Language: Writing skills are at the end of second grade level [and] is working on developing a writing plan and placing proper capitals and ending marks in his writing.
3. A "Consent for Initial Evaluation" form noted the Student was to be evaluated in the following areas: medical-physical, academic, general education, social/emotional, and cognitive.
4. On June 1, 2022, the District's evaluation group, including the Parent, completed an initial evaluation of the Student.

The June 2022 evaluation group found the Student eligible under the category of health impairment and recommended the Student receive specially designed instruction in reading skills, behavior, writing, and math skills.

The June 2022 evaluation report noted, in part, that the Student had occasional challenges with following instructions and could become distracted.

The June 2022 evaluation report read, in part:

The Verbal Comprehension Index (VCI) [portion of the Wechsler Intelligence Scale for Children – Fifth Edition] is ranked at the 66<sup>th</sup> percentile and classified in the average range compared to age-mates. The VCI measures language-oriented problem solving ability and abstract verbal reasoning ability. In general, the Student's abilities associated with

understanding verbal information, thinking with words, and expressing thoughts in words represents areas of Clinically Significant Strength when compared to his own ability.

...

[The Student had a comparatively high General Ability Index (GAI) score] which indicates, in part,) well-developed...verbal problem-solving.

...

**Recommendations:**...The Student performed best on tasks involving high order reasoning abilities, particularly in the area of language-oriented problem solving, [so] the IEP team should attempt to design tasks and activities that allow for the Student to exercise these ability sets.

Consider utilizing a verbal or oral response format as many of the Student's higher performance occurred on subtests that allowed for a verbal response.

...

Consider introducing the Student to using Talk-To-Text software as this may assist in situations where the Student may be required to compose written works in the future.

**Social/Emotional:**...The Behavior Assessment System for Children – Third Edition [shows, in part,] Student's functional communication [skills] are estimated as ranked at the 16<sup>th</sup> percentile compared to age-mates. These data suggest that the Student demonstrates some level of difficulty with person-to-person communication in a classroom environment, as well as, in seeking out and finding information independently.

5. On June 14, 2022, the Student's IEP team developed the Student's initial IEP. The June 2022 IEP read, in part, "Parents are concerned with some of Student's articulation and fine (handwriting)...Student does not have communication needs...Student does not have assistive technology needs...Reading Skills:...Student read a third grade level fluency prob [and] read 99 words correct with 99% accuracy."

The June 2022 IEP included, in part, the following goals:

- **Reading (summarizing):** "By 06/13/2023, when given an independent level text, nonfiction or fiction and given a graphic organizer Student **will** write a summary of the text improving comprehension skills from 5 details to 8+ details, over 3 consecutive opportunities as measured by teacher collected data" (emphasis added).
- **Writing (conventions):** "Student will edit for proper conventions (beginning capitals, ending punctuation, and spelling), improving writing conventions from 50% on beginning capitals and ending punctuation and 75% spelling to 80% accuracy in all areas."

The June 2022 IEP included, in part, the following accommodations, "handwriting accommodations – visual cues on paper for alignment, pencil grips" and "seating near good role model that won't distract Student from learning."

The June 2022 IEP provided the Student, in part, with the following specially designed instruction in writing in a *special education setting* from June 18, 2022 through June 13, 2023: 120 minutes 1 time a week (to be provided by special education staff).

A June 14, 2022 prior written notice read, in part:

Parent's concern with his articulation and fine motor (handwriting) was added as a concern. It is recommended that the [speech language pathologist] SLP and [occupational therapist] OT do an informal look to see if additional testing would be warranted...The team added several accommodations that were generated by his parents. These included handwriting supports [and] seating near a good role model who won't distract.

### **2022–2023 School Year**

6. At the start of the 2022–2023 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 June 2022 IEP was in effect.
7. According to the District, on various occasions throughout the 2022–2023 school year, the Parent served as a substitute paraeducator in the Student's elementary school.
8. The District's response included at least two writing samples from the Student.
9. In its response, the District stated, "the Student received specially designed instruction in writing, four days a week for 30 minutes, from 2:00 PM through 2:30 PM, Monday through Thursday." And the Student's special education teacher provided this specially designed instruction in a pull-out format.

The District's response included a service provider log completed by the special education teacher, specifically related to the Student's specially designed instruction in writing. This log shows that between September 12, 2022 and January 5, 2023, the Student received approximately 50 half hour sessions of specially designed instruction in writing.

10. The District's response included a Google form "check-in" sheet related to the Student's disposition. It included 19 entries. (On the version of the form provided to OSPI, the dates of the entries were not visible.) The entries included a number between 1 and 5, with "1 being a rough day and 5 being an excellent day." The breakdown for the 19 entries was as follows: one "2" days; three "3" days; six "4" days; and nine "5" days.
11. According to attendance data, from the beginning of the school year through December 8, 2022, the Student had seven excused absences largely due to illness, and on two occasions, the Student was picked up early from school.
12. The District's response included two separate email threads, collectively dated September 15, 2022 through September 23, 2022, that show, in part, the Student was performing well and on task in the school setting.
13. The District's response included a provider log completed by the SLP, showing on September 27, 2022, the SLP worked with the Student in a small group setting for 15 minutes.
14. On September 29, 2022, the SLP emailed the Parent, stating, in part:

I was able to listen to Student and I agree, the 'th' sound is a little challenging for him at present. That being said, he was able to correct it when I gave him some reminders, cues, and instruction. That was great to see!

I am thinking of pulling him for the next 5–7 weeks for informal SLP services. After those few weeks we can look at how he is doing and make a plan.

Later that day, the Parent responded, stating, "That sounds fantastic, thank you!"

15. The SLP provider log shows that on September 29, 2022, the SLP worked with the Student in a small group setting for 15 minutes.
16. On September 30, 2022, the Student's teacher emailed the Parent, stating, in part, "Student leveled up in his responsibility and respectfulness by talking with another student and myself about what he did not like the student doing. I appreciate his communication and will continue to make sure that both students are aware of what is going on and a resolution."

A separate email thread, dated September 30, 2022, between the principal and the Parent, showed, in part:

- Parent expressed a concern the Student was being bullied by another student, and that this bullying was preventing the Student from fully accessing his education;
- The principal "worked" with the other student regarding a directive to not hit the Student with frisbees at recess;
- The parties discussed whether a no-contact agreement between the two students was warranted<sup>1</sup>; and,
- The Parent detailed some of the bullying that the Student had been subjected to, including, in part, the following: having his hat pulled off while on the bus; having had objects thrown at him; and, having received threats.<sup>2</sup>

17. The SLP provider log shows: on October 4, 2022, the SLP worked with the Student in a small group setting for 15 minutes.
18. On October 3, 2022, the Parent emailed one of the Student's teachers, noting the Student had some behavioral successes the past week, but also some behavioral challenges. The email read, in part: "We are working through some more issues that seem to be arising in-class [and during] bus time [from Student interacting] with this other student. It appears that [it] is

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<sup>1</sup> As of September 30, 2022, the documentation did not clearly specify whether a no-contact agreement was in place: the Parent expressed a belief it was in place; the other student allegedly made statements suggesting he understood a no-contact agreement to be in place; but, the principal stated, "Student has asked for more time before moving to a no-contact agreement"; and the principal stated the District would determine if the other student's behavior represented bullying, and if it did, a no-contact agreement would be instituted.

<sup>2</sup> Allegedly, this other student told the Student that "I am going to come to your house with a hammer."

weighing pretty heavily on Student. We are [trying to encourage him to] not interact with [with this other student].”

19. According to the District, “On October 7, 2022, the SLP had an in-person conversation with the Parent that there were no educational speech concerns. During this conversation, the Parent expressed excitement and gratitude.”
20. Also, on October 7, 2022, the SLP emailed the Parent “a few home practice activities [Parent could] use with Student that focus on the TH sound.”

A separate email authored by the intervention specialist on October 7, 2022 noted the Student engaged in self-advocacy and helped resolve a dispute with another student on the bus that day.

21. According to emails exchanged between the Parent and the teacher, during the week of October 17, 2022:
  - The teacher generally reported the Student had positive academic experiences and demonstrated focus on academics tasks;
  - The teacher reported “Student is liking his seat in the front”; and,
  - The Parent stated, “Last week was a mixed week for him. Beginning of the week until about Thursday was tough for him with...issues [with the other student] either at school or on the bus, but I spoke with the intervention specialist and it seemed like maybe there is some traction now.”<sup>3</sup>

22. An October 18, 2022 email from a District staff person read, in part:

This afternoon Student marked a 3 out of 5 [on his emotional check-in] due to a student being mean to him...I encouraged both boys to let each other know when they are not liking something that the other is doing. If that doesn't work, they can tell an adult. I [was] proud of the boys during their conversation. They are learning some great self-advocacy skills and how to be cordial to one another.

23. According to the Parent’s complaint request, on or about October 19, 2022, the intervention paraeducator informed her that a no contact agreement was not being implemented.
24. On October 20, 2022, the Parent emailed the intervention specialist, stating, in part, “The other student blocked Student from getting to a mutual friend and then, in class, despite being in different groups, the other student blocked Student from seeing the board/what was needed to figure out things and the other student was laughing about it.”

Later that day, the intervention specialist responded, stating, in part:  
I investigated your report. According to Student: He was in the classroom for a scavenger word hunt. The other child was standing in front of the word that Student wanted to see. The other boy bent over the word blocking it from Student. Student stated he was 50%

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<sup>3</sup> In supplemental information provided to OSPI, the Parent further stated, “That afternoon the intervention specialist called me back saying she was going ahead with the contract to show seriousness to the other child. The intervention specialist claimed she would be keeping an eye on interactions at recess/lunch/etc. with them but would also be meeting with the other child to get to know him.”

sure the other student meant to do it. When asked if other people were around them, He said no. When asked about the other child blocking Student from friends, Student could not be specific on what day this happened. I asked if it was reported right away, his reply was, No he didn't report it.

The finding showed the scavenger hunt incident did happen. Appropriate steps are being taken with the other student regarding this incident.

25. According to an email from the Parent to the intervention specialist, on or about November 2, 2022, the Student and the other student played together during recess, but this did require some guidance from a staff person. The Parent's email read, in part:

Today Student came home saying the other student was following him to soccer and was just being rude towards him with his attitude and words again and Student would rather he get to be separate from him at his breaks. This is all very confusing to us because once you had gotten involved and updated me via email last time it was working well keeping them apart and we finally had about a week of peace. We thought you were the one in charge of this bullying situation as a whole and are wondering if you were informed of this? I thought you had done the no contact contract with the other student so he would take it seriously.

26. On November 4, 2022, the Parent emailed the Student's father, stating, in part:

Last night Student came home and said he feels unsafe at that school, this morning he was refusing to go. [Regarding] sitting near a good role model: Student said he is sitting...one seat away from the other student now [and] Student wondered why he was so close and asked me if his teacher was aware of the problems. I told Student the teacher is well aware.

27. The District's response included progress reporting related to the June 2022 IEP, dated November 7, 2022. In relation to Issue 1, these entries read:

- **Writing (conventions):** Sufficient Progress: "When given a visual writing prompt and vocabulary box, Student is able to produce a 3-4 sentence paragraph, 1 sentence stating the main thing that happened in the picture and 2-3 supporting detailed sentences. He is able to properly place capitals and periods in these picture prompts. Student continues to work on transferring his knowledge on sentence structure taught in lessons, to his free writes. Recently, on a non structured writing assignment, Student was able to show proper usage of capitals with 20% accuracy, periods with 60% accuracy and spelling with 93% accuracy."
- **Reading (summarizing):** Sufficient Progress: "Student is able to write a summary of the text with 6 details."

The November 7, 2022 progress reporting indicated the Student made sufficient progress on the remaining goals in the June 2022 IEP: reading (decoding and fluency); reading (questions); math (addition with regrouping); math (subtraction with regrouping); math (multiplication and division facts); math (word problems); behavior (organization); and behavior (asking for help).

28. The Parent and principal exchanged emails between November 7 and 9, 2022, discussing whether a meeting to discuss the Parent's "bully reports, IEP, and classroom communication" would be helpful. (It does not appear a decision was reached in regard to whether a meeting was to take place.)

One of the principal's emails read, in part:

The no contact agreement between the boys is still an expectation. There was one recess that the boys approached a recess teacher and she asked me. I checked with both children and they desired to play with each other so I did give permission for the one recess, under the supervision of the recess teacher to allow it. I will not do so in the future or until I hear from both parents. I thought, at the time, that this was a very positive thing for them.

29. On November 8, 2022, the Parent emailed the special education teacher, stating, "Here is the formal request to have Student stop filling out his google form for daily check-ins. He has shared not wanting to do this."
30. On November 9, 2022, the intervention paraeducator emailed District staff a reminder that the Student and the other student were not to have contact with each other. Said email read, in part, "If either boy or both come to you asking to play together, please send them to me."
31. On November 10, 2022, the Parent stated a meeting to discuss the bullying was not needed, but that the Parent did want a "clearly outlined" plan to address the alleged bullying. (This email also noted that, as per District directive, the intervention paraeducator and the teacher would be the contacts for the Parent's bullying concerns.)
32. According to the District, "the Parent was removed from subbing [as a paraeducator] at the Student's school on November 15, 2022 [because the District had concerns] Parent's [employment] was conflicting with the Student's [educational] experience."
33. According to the Parent's complaint request, a "school conference" regarding the Student took place on November 17, 2022. The Parent stated that during that conference, "three writing samples were shown, one was ok, one was better, and the most recent [writing sample] was very rough-looking...It [represented] a clear regression [of Student's writing abilities]."
34. On November 18, 2022, the Parent emailed District staff, expressing concern "that Student was sitting only one seat away from his bully."
35. On November 19, 2022, the Parent emailed District staff, stating, in part: the Student had been chased by the other student at PE that day; at a recent "conference," the Parent had been informed the other student "was assigned one seat away from" the Student and that that was "not ok" and the teacher subsequently "moved [the other student]"; and the Parent expressed disagreement that the Student be expected to conduct any additional "conflict resolution" exercises with the student she perceived to be a "bully."
36. On November 21, 2022, the special education teacher emailed the Parent, stating, in part:

I received the email about the situation between Student and the other student at PE on Friday. We looked into the situation. The students were playing a game in PE that involved chasing. The other student did not have the intent of making anyone uncomfortable. He was not observed doing anything outside of the rules of the game or targeting any specific person. He was trying to get all students with the 'noodle.'

On November 22, 2022, the Parent expressed a belief that the no contact agreement meant the other student should not have been in a position to chase the Student with a noodle.

37. A November 22, 2022 prior written notice read, in part:

Due to the special education teacher being out with no sub on November 1, 2022 (half day) and November 9, 2022 (full day), Student missed 120 minutes.

...

The District is proposing that Student attend special education services [for a half hour] on the following Fridays to make-up the missed 120 minutes: December 3, 10, and 17, 2022; and January 6, 2023.

38. On November 23, 2022, the intervention paraeducator emailed the Parent, stating, in part:

District staff, as well as Student and the other student, are aware of the no contact agreement [and] the no contact contract is in place to ensure distance is kept during unstructured times...where there is no direct adult supervision.

In PE, music, library, media and the classroom, students are supervised while engaging in classroom activities. Fortunately, it seems that these scenarios between the other student and Student are improving. Both boys are aware of the expectations. If incidents such as this do arise, we can mention them on the daily communication form, as long as Student lets us know. Otherwise, we appreciate you letting us know when Student is not feeling safe.

39. According to the Parent and the District, the Student withdrew from the District on January 3, 2023.

40. The Parent's complaint request included a private SLP report, dated January 12, 2023. It read, in part:

The results from this assessment revealed: delayed expressive language skills, indicating a diagnosis of expressive language disorder; and, delayed articulation skills, indicating a diagnosis of phonological disorder. All other areas of communication assessed revealed age-appropriate development...It is recommended that Student receive medically necessary, skilled speech-language therapy services for 30 minute sessions twice a week.

41. The Parent's complaint request included a private OT report, dated February 1, 2023. It noted, in part:

Student demonstrates difficulty with fine motor skills, visual motor skills, sensory processing, social skills, and anxiety that are impacting his functional independence...His difficulties with both fine motor and visual motor skills are greatly impacting his handwriting which falls below developmental expectations. Student demonstrates difficulties with letter formation, spacing, fluency, copying...and overall legibility.

In its response, the District noted, "The Student was unenrolled from the District on January 1, 2023, therefore [the private SLP and OT reports were] not considered by the IEP team as the Student was not enrolled [at] that time."

42. On March 15, 2023, the Student was administered a private speech and language evaluation. The private speech evaluation report read, in part:

Student is a 4th grade student attending [an online school] who was referred by the parent for a review of an outside speech and language evaluation.

...

**TESTS ADMINISTERED:** *Informal Observation; Clinical Evaluation of Language Fundamentals-5th Edition (CELF-5); and, Goldman Fristoe Test of Articulation-3rd Edition (GFTA-3).*

...

**ARTICULATION:**

During a 5–10-minute conversational sample, Student was 100% intelligible. However, Student had a recent private evaluation conducted on January 2023 that noted difficulty with producing velar 'ng' and voiceless 'th'. It was recommended from that evaluation that those sounds be addressed in therapy. Since those same sounds were noted during this evaluation as an area of concern, Student would benefit from receiving support on these sounds in therapy.

...

**IMPRESSIONS/SUMMARY...** Voice, and Fluency present within normal limits. Expressive and Receptive Language presents in the below average/moderate-severe range compared to peers of the same age and gender. Articulation presents in the mildly below average range. Student's communication deficits adversely impact his oral performance in the classroom, including his ability to share his thoughts and ideas, complete reading and writing tasks, and participate in structured academic assignments and discussions. It is recommended that Student receive speech and language therapy services to improve his overall communication skills in Expressive and Receptive Language and Articulation.

43. In her complaint request, the Parent stated there were other incidences of bullying—that were not documented in emails or the school-home communication log—also took place, including, in part, occasional pushing of the Student by the other student and the other student interfering with the Student's ability to play soccer and four square.
44. On April 10, 2023, OSPI's investigator interviewed the principal, the special education teacher, and the classroom teacher.

In regards to seating arrangements, those interviews showed the following: the Student sat in the front of the classroom; when classroom seating determinations were made, the Student was consulted for his location preference, as well as which of his classmates he wanted to sit next to; and the Student had a group of two to four students that sat near him and which he worked well with. There was one incident in November 2022, wherein the Student and the other student were sat near each other—diagonally from one another—but this seating arrangement was quickly changed; and there were approximately 24 students in the Student's class, and the classroom teacher placed the Student and the other student in opposite corners of the room, so as to limit interaction.

In regard to the Student's behavior during the 2021–2022 school year, the Student's classroom teacher and special education teacher both reported the Student was almost invariably happy, energetic, and engaged with schoolwork.

## CONCLUSIONS

**Issue 1: IEP Implementation** – The Parent alleged the District did not follow proper procedures during the 2022–2023 school year for implementing the following provisions of the Student’s individualized education program (IEP): specially designed instruction in writing, and the accommodation of the Student being sat “near [a] good role model that won’t distract Student from learning.”

A district must 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.

### *Specially Designed Instruction in Writing*

The June 2022 IEP provided the Student with the following specially designed instruction in writing in a *special education setting* from June 18, 2022 through June 13, 2023: 120 minutes 1 time a week (to be provided by special education staff).

Here, the documentation, including the provider log for specially designed instruction, shows this portion of the June 2022 IEP was materially implemented. For example, in part: on almost every weekday between Monday and Thursday, the Student received 30 minutes of specially designed instruction in writing, total for each week, 120 minutes, and as of early November 2022, the Student had made sufficient progress on the reading (summarizing)<sup>4</sup> and writing (conventions) goals in the June 2022 IEP. Additionally, when the Student missed several of the regularly scheduled specially designed instruction writing sessions in early November 2022—because the teacher was absent and no substitute teacher was present—the District collaborated with the Parent in scheduling make-up sessions for the Student. Further, the District’s response included two writing samples authored by the Student, and according to the Parent, at the November 17, 2022 conference, the attendees reviewed three writing samples authored by the Student. In sum, the evidence provided to OSPI during this investigation strongly suggests the portion of the June 2022 IEP that dealt with specially designed instruction in writing was materially implemented during the 2022–2023 school year.

### *Seating Accommodation*

The Parent alleged the following accommodation in the June 2022 IEP was not materially implemented: “seating near good role model that won’t distract Student from learning.” Specifically, the Parent stated the foregoing accommodation was not materially implemented because at some point in November 2022, the other student was sat near the Student.

Interviews with the special education teacher and the classroom teacher, show, in part: the Student sat in the front of the classroom; when classroom seating determinations were made, the Student

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<sup>4</sup> The reading (summarizing) goal included a written component.

was consulted for his location preference, as well as which of his classmates he wanted to sit next to; and the Student had a group of two to four students that sat near him and which he worked well with. During the week of October 17, 2022, the teacher authored an email that read, in part, "Student is liking his seat in the front." District staff shared during interviews that there was one incident in November 2022, wherein the Student and the other student were sat near each other—diagonally from one another—but this seating arrangement was quickly changed; there were approximately 24 students in the Student's class, and the classroom teacher placed the Student and the other student in opposite corners of the room, so as to limit interaction.

On the basis of the foregoing facts, OSPI does not find an IEP implementation violation. This investigation showed for most of the school year, the Student was sat in a location separate from the other student, and on the one occasion when the Student was sat in a location similar to the other student, the seating arrangement was adjusted, to increase the space between the students. OSPI does not find a violation.

**Issue 2: IEP Development** – The Parent alleged, beginning in June 2022, the District did not follow proper procedures for responding to any potential need resulting from the Student's disability in the areas of speech therapy and occupational therapy.

An IEP team must be responsive to any potential change in need resulting from a student's disability. Being responsive to a potential change in need might resemble a revision of a student's IEP services. For example, a student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

Being responsive to a potential change in need might also resemble conducting a reevaluation of a student. For example, a school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation. Additionally, an IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability.

Here, the April 12, 2022 special education referral and related prior written notice do not mention specific concerns regarding the Student's potential need under the IDEA for either speech or occupational therapy. The District's response also included a partially completed consent form for the June 2022 evaluation report. It also does not mention specific concerns regarding the Student's potential need under the IDEA for either speech or occupational therapy.

The June 2022 evaluation itself contains information ancillary to speech language and occupational therapy concerns. For example, in part, the June 2022 evaluation read, in part, "the Student's abilities associated with understanding verbal information, thinking with words, and expressing thoughts in words represents areas of Clinically Significant Strength when compared

to his own ability” and behavior “data suggest that the Student demonstrates some level of difficulty with person-to-person communication in a classroom environment.”

Based on the documentation provided to OSPI during this investigation, it appears the Parent first raised speech therapy and occupational therapy concerns on or about June 14, 2022, when the evaluation was complete and the Student’s IEP was being developed. For example, both the June 2022 IEP and the related prior written notice recorded the Parent had some concerns in these areas. These two documents noted, “the Student does not have communication needs” (June 2022 IEP), and the IEP team added the accommodation of writing supports in response to the Parent’s concern regarding occupational therapy (June 2022 prior written notice). The June 2022 prior written notice did read, “It is recommended that the SLP and OT do an informal look to see if additional testing would be warranted.”

On the basis of the foregoing, OSPI finds the District did not violate the IDEA in June 2022 by not conducting additional assessments specific to speech therapy and/or occupational therapy. There was very limited information suggesting the Student had a need in either of these areas, but the District did respond to the Parent’s concerns, by including a certain accommodation in the IEP (“handwriting accommodations – visual cues on paper for alignment, pencil grips”) and by agreeing to informal data collection in fall 2022.

In fall 2022, the speech language pathologist (SLP) worked with the Student for a total of 45 minutes over three separate sessions in September and October. During those sessions, the SLP did note the Student did initially have difficulty with “the ‘th’ sound”, but that the Student performance with this sound improved over the course of the three sessions with the SLP. On October 7, 2022, the SLP emailed the Parent “a few home practice activities [Parent could] use with Student that focus on the TH sound.” It is not clear what, if any, data on potential occupational therapy needs was gathered during fall 2022.

In relation to the period of time covering the start of the school year through January 3, 2023 (when the Student was unenrolled from the District), OSPI does not find a violation of the IDEA: during this time period, there was, again, very limited information suggesting the Student had a need in either of these areas. For example, as of early November 2022, with the help, in part, of the writing accommodation and the temporary speech language intervention, the Student was able to make sufficient progress on each of the goals in the June 2022 IEP. Therefore, OSPI does not find a violation of the IDEA into the decision made at that time, that additional speech therapy and/or occupational therapy assessments and/or services were not needed.

OSPI does, though, find a violation in relation to both parental participation and prior written notice requirements.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education and related services and supplementary aids and services; and

(3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options.

Here, the District stated, "the SLP had an in-person conversation with the Parent that there were no educational speech concerns." The District also stated, "there was a follow-up observation in which it was determined that no additional testing was needed." But the documentation provided to OSPI during this investigation does not provide any firm context for these purported conversations. And it is clear the Parent was confused as to whether additional speech therapy interventions were going to be pursued and whether the IEP team had made a definitive decision regarding whether the Student required either speech therapy or occupational therapy. If the District had provided the Parent with a prior written notice in October 2022, clearly delineating (1) what information on the Student's potential need in the area of speech therapy and occupational therapy the IEP team had gathered; and (2) why the IEP team believed this meant no additional assessments or revisions to the IEP were warranted, the Parent would have been able to be a more full participant in IEP team determinations. Accordingly, OSPI finds a violation.

In its response, the District stated, "the special education director reminded [the SLP and OT] that, in the future, [these types of decisions] should be documented through a prior written notice and training on prior written notices was provided...to all special education certificated teachers" in spring 2023. Therefore, an appropriate remedy for the identified violation is that the District will provide a training to educational staff associates at the Student's school for the 2022–2023 school year in the areas of parent participation and prior written notices.<sup>5</sup>

**Issue 3: Bullying** – The Parent alleged the District did not permit the Student to access a free appropriate public education (FAPE) because it did not properly respond to bullying the Student experienced.

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<sup>5</sup> The Student was withdrawn from the District on January 3, 2023. After this date, the Parent procured two private speech language pathology reports and one private occupational therapy report, all of which suggest the Student may have a need in these respective areas. If the Student were to be reenrolled in the District, the District is reminded it would need to consider this information in determining whether additional assessments needed to be administered to the Student or whether certain revisions needed to be made to the Student's IEP.

Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a FAPE in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that their IEP is no longer providing educational benefit.

Harassment or bullying that adversely affects that student's education, may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered.

Here, the documentation shows, in part: the Student did experience challenging interactions with the other student. For example, in part: on or about September 30, 2022, the principal "worked" with the other student regarding a directive to not hit the Student with frisbees at recess; an October 18, 2022 email from a District staff person read, in part, "Student marked a 3 out of 5 [on his emotional check-in] due to a student being mean to him"; and throughout the school year, the Parent reported the other student engaged in behaviors such as blocking the Student from accessing the school board and preferred peers and pulling the Student's hat off him while on the bus.

Importantly, the District did respond to the foregoing incidences. For example, in part: District staff worked with the Student and the other student to navigate disputes and ensure proper interactions<sup>6</sup>; the District staff implemented a no contact agreement between the Student and the other student<sup>7</sup>; the District investigated the Parent's specific concerns regarding bullying<sup>8</sup>; and the Parent and principal exchanged emails between November 7 and 9, 2022, discussing whether a meeting to discuss the Parent's "bully reports" was needed, but on November 10, 2022, the Parent stated a meeting to discuss the bullying was not needed.

Additionally, this investigation did not show the Student's challenging interactions with the other student prevented the Student from accessing FAPE. For example, in part: as of November 7, 2022,

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<sup>6</sup> Including, in part, on September 30, October 7, October 18, and November 2, 2022.

<sup>7</sup> The no contact agreement applied to unstructured settings and was in effect beginning on or about September 30, 2022. OSPI does acknowledge the no contact agreement was imperfectly implemented—on a couple occasions after September 30, 2022, District staff permitted the Student and the other student to interact with one another. But, following these occasions, reminders were provided to District staff that a no contact agreement was in place.

<sup>8</sup> For example, on or about October 20, 2022, the intervention specialist investigated the Parent's report that the other student had blocked the Student from preferred peers and/or instruction written on the board. Furthermore, on November 21, 2022, the special education teacher investigated the Parent's report the other student had chased the Student with a noodle. The special education teacher reported, in part, "The students were playing a game in PE that involved chasing. The other student did not have the intent of making anyone uncomfortable. He was not observed doing anything outside of the rules of the game or targeting any specific person."

the Student made sufficient progress on all his IEP goals; the Student consistently attended school during the 2021–2022 school year; documentation and interviews showed, in part, occasionally the Student and the other student wanted to play together and actually engaged in self-advocacy; the clear majority of entries on the Google “check-in” sheet, completed with reporting by the Student, showed the Student frequently had “excellent [emotional] days”; and the Student’s classroom teacher and special education teacher both reported the Student was almost invariably happy, energetic, and engaged with schoolwork.

For the foregoing reasons, OSPI does not find a violation. While the Student did have challenging interactions with the other student, the District took appropriate steps to address the same, and said interactions did not appear to prevent the Student from accessing FAPE. No violation is found.

### **CORRECTIVE ACTIONS**

By or before **April 21, 2023, May 5, 2023, and May 22, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

##### **Training**

The following District staff will receive training: educational staff associates (ESAs)<sup>9</sup>, at the school that the Student was enrolled in during the 2021–2022 school year. The training will cover the following topics:

1. Parent participation (WAC 392-172A-05001); and,
2. Prior written notices (WAC 392-172A-05010).

The training will include examples.

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 above topics.

The District will provide the trainer with a copy of this decision, SECC 23-20.

By or before **April 21, 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 **May 5, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by May 10, 2023.

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<sup>9</sup> ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

By **May 19, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 22, 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.

### **REMINDER**

The Student was withdrawn from the District on January 3, 2022. After this date, the Parent procured two private speech language pathology reports and one private occupational therapy report, all of which suggest the Student may have a need in these respective areas. If the Student were to be reenrolled in the District, the District is reminded it would need to consider this information in determining whether additional assessments needed to be administered to the Student or whether certain revisions needed to be made to the Student's IEP.

Dated this 11th day of April, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

#### **THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)