

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-11**

### **PROCEDURAL HISTORY**

On February 7, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 8, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 25, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on February 28, 2022. OSPI invited the Parent to reply.

On March 11, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On March 11, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on March 11 and 16, 2022. OSPI forwarded the information to the Parent on March 14 and 16, 2022.

On March 16, 2022, OSPI received additional information from the Parent and forwarded a copy to the District the same day.

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

### **ISSUE**

1. Has the District followed procedures to address the Parent's concerns regarding the Student's disability-related needs during the 2021–2022 school year, including:
  - a. Scheduling an IEP meeting with a properly constituted IEP team; and
  - b. Addressing the Student's school refusal behaviors?

### **LEGAL STANDARDS**

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's individualized education program (IEP). *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an

IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

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. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education

environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

General Education Teacher Attendance at IEP Meetings: Not less than one of the student's general education teachers must participate as a member of the IEP team, if the student is, or may be, participating in the general education environment, to assist in the determination of appropriate annual educational goals, behavioral interventions, supplementary aids and services, program modifications, and/or supports for the student. 34 CFR §§300.321, 300.324; WACs 392-172A-03095(1)(b) and 392-172A-03110. Participation by a general education teacher is an important aspect of the IEP development process because of their knowledge of how a student with a disability might benefit from being placed in a general education classroom. IDEA, 62 Fed. Reg. 55,124 (October 22, 1997) (Appendix C to 34 CFR Part 300). The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. However, the general education teacher may not, depending upon the child's needs and the purpose of the specific IEP team meeting, be required to participate in all decisions made as part of the meeting, be present throughout the entire meeting, or attend every meeting. IDEA, 64 Fed. Reg. 12,475, 12,477 (March 12, 1999) (34 CFR Part 300, Questions 24 & 26).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9<sup>th</sup> Cir. 1994).

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. 34 CFR 300.503; WAC 392-172A-05010.

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.

Notice of Procedural Safeguards: The notice of procedural safeguards must provide a full explanation of a student's rights including those rights related to: prior written notice; dispute resolution options and procedures. A copy of the procedural safeguards must be given to parents, at a minimum one time per school year and: the first time the child is referred or the parent requests a special education evaluation; the first time the parent files a community complaint or due process request in a school year; the first time the parent or the district files a due process hearing request during the year; on the date the district decides to make a disciplinary change of placement; or anytime the parent requests a copy. 34 CFR §300.504(a); WAC 392-172A-05015.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

## **FINDINGS OF FACT**

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of developmental delay, was enrolled to attend first grade at a District elementary school, and his March 4, 2021 individualized education program (IEP) was in effect.
2. The District's 2021–2022 school year began on September 2, 2021.
3. The Student's March 2021 IEP required the provision of 1,445 minutes of special education services each week. The special education services minutes included:
  - Adaptive: 250 minutes weekly to implement the adaptive skill (following directions) goal;
  - Social-emotional: 250 minutes weekly to implement social-emotional skill (attending and self-regulation) goals;
  - Cognitive: 900 minutes weekly to implement cognitive skill goals and objectives, specifically math, reading, and written expression skills;

- Communication: 30 minutes weekly of speech and language services to implement communication goals (receptive language skill development, answering WH questions and conversational turn-taking); and,
- Occupational therapy: 15 minutes weekly of occupational therapy services to implement a bilateral control/fine motor goal.

None of the specially designed instruction in the March 2021 IEP was to be provided concurrently.

The Student's IEP also indicated he was to join his grade level peers for 225 minutes each school week. The present levels of academic and functional performance section of the Student's IEP indicated he joined music and physical education (PE) general education classes and that "he would benefit from in-person learning".

4. Both Parent email correspondence and District records verify that the Parent began emailing the school team members on September 15, 2021, indicating she has having difficulty getting the Student to attend school.

Emails following this initial communication document the Parent sharing detailed concerns regarding the Student's school refusal behaviors with the school team. Emails from the Parent regarding the Student refusing to attend school and her attempts to obtain community assistance from various agencies were sent throughout the month of September 2021. The Parent emailed the Student's IEP team members on September 15, 16, 17, 20, 21, 24, 27, 28, 30, and 31, 2021, each time updating the team on efforts to gain assistance to support the Student attending school. Of note:

- On September 15, 2021, the Parent reported that she had contacted the Student's primary physician for a referral to a behavioral health clinic to support the Student "transitioning to school".<sup>1</sup>
- On September 17, 2021, the Parent updated the team members that she was returning to the primary care physician after consulting with the community behavioral health clinic.
- On September 18, 2021, the Student's special education teacher acknowledged the emails and wrote, "I appreciate your communication and look forward to brainstorming solutions to help him access education...to the greatest extent possible and address anxiety issue to the best of our ability."
- On September 20, 2021, the Student's special education teacher offered to "send assignments home; however much of the work in these initial weeks is teaching students how to be successful at school...Would you consider bringing him for a reduced schedule? I recognize the challenge at home when he's experiencing a high level of anxiety."
- On September 24, 2021, the Parent emailed to report that the Student had seen his physician, the physician intended to reach out to the school and that the Student had an appointment with an autism clinic in December. The Student's special education teacher emailed a response that day, offering suggestions such as a reduced day, activities for the Parent to try, and a link to curricula.

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<sup>1</sup> According to the Student's IEP, during the 2020–2021 school year, the Student attended school on a hybrid schedule with some remote and some in-person instruction. There was no documentation that the Student was struggling to attend school during the 2020–2021 school year.

- On September 28, 2021, the Student's special education teacher again emailed and suggested a half day schedule.
5. District records indicate that the Parent and some of the Student's IEP team members met to "discuss school refusal behavior" on October 1, 2021. District records do not include an "Invitation to the Meeting," provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, nor was a prior written notice issued regarding this meeting.

The District's written response to this complaint indicated that the special education teacher would visit the Student's home to establish a relationship and encourage attendance.

6. Email correspondence and District records indicate the Parent and some of the IEP team members communicated regularly throughout October 2021, with staff providing suggestions for the Parent to assist the Student to return to school. Between October 2 and 31, 2021, the Parent and IEP team members corresponded via email at least 15 times.
7. On October 28, 2021, the Parent and the Student's special education teacher met to discuss strategies for the Student. District records do not include an "Invitation to the Meeting," provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, and there was no prior written notice issued regarding this meeting.
8. There were fewer email communications between the Parent and District IEP team members in November 2021; however, the District's written response stated that the Parent met with the IEP team (principal, family advocate, special services administrator, school counselor, occupational therapist, special education teacher, and Parent) on November 23, 2021. Notes from the meeting provided by the District indicate that a re-entry plan was developed, and that the Student would attend school on a reduced schedule. District records do not include an "Invitation to the Meeting," provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, and there was no prior written notice issued regarding this meeting.
9. The Student did not return to school on November 29, 2021 as anticipated by the team notes. On November 30, 2021, the Student's special education teacher emailed the Parent that she would connect with an educational service district (ESD) behavior interventionist to discuss strategies for school refusal.
10. The District response indicated that the Parent and the Student's special education teacher, principal, family advocate, and occupational therapist met on December 5, 2021. District notes from the meeting summarized that "Parent requested no more work, Student will not engage with work at home. Student has an appointment with medical provider in December for re-evaluation [and special education teacher] has meeting scheduled with ESD BCBA...to discuss school refusal strategies."

District records do not include an "Invitation to the Meeting," provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, and there was no prior written notice issued regarding this meeting.

11. Also, on December 5, 2021, the Student's special education teacher emailed the Parent, to communicate that a meeting with the "Behavior Technician" was scheduled for Thursday afternoon.<sup>2</sup>
12. On December 9, 2021, the Parent emailed the Student's special education teacher, requesting an IEP meeting. The District response indicated that the Student's special education teacher had met with the ESD board-certified behavior analyst (BCBA) who identified a re-entry plan and social stories to send home to the Parent and that the "behavior analysts work with Student directly hinges on school attendance due to COVID safety procedures."
13. On December 10, 2021, the Student's special education teacher offered to convene the Student's IEP team on January 5, 2022.
14. The District was on winter break December 20, 2021 through January 3, 2022.
15. On January 3, 2022, the Parent emailed the Student's special education teacher and several IEP team members and provided a written set of recommendations from a medical provider at the Seattle Children's Autism Center. The recommendations were dated December 23, 2021 and included specific educational recommendations:
  - Behavior support, specifically including a functional behavioral assessment (FBA) to be completed for a behavioral intervention plan (BIP) that can be used in the school environment;
  - Strategies to address "school aversion," including use of social stories for school to set expectations for the school day, a phased approach back to school that includes positive reinforcement and regular meetings with school counselor and including school counselor in behavior supports and phased approach back to school;
  - Supports at home to include visual schedules and warnings for Student; and,
  - Beginning the process of accessing ABA (applied behavioral analysis) therapy.
16. On January 5, 2022, members of the Student's IEP team (Parent, a representative from Partnerships for Action, Voices for Empowerment (PAVE), principal, special education teacher, OT, and parent advocate) met. The District response indicated the team discussed strategies for the Parent to use to improve the Student's ability to attend school and discussed the Parent's requested in-home services. The Parent was offered enrollment in courses to support the Student.

District records do not include an "Invitation to the Meeting," provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, and there was no prior written notice issued regarding this meeting.
17. On January 6, 2022, the District response indicated that the Student's special education teacher emailed the Parent that she would follow up with District administration about the possibility of providing in-home services to the Student.
18. On January 31, 2022, email and District records document that the Student's special education teacher emailed the Parent to schedule an "upcoming IEP and 3 year re-evaluation" and that

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<sup>2</sup> Email correspondence documents that this meeting occurred sometime between December 5 and 9, 2021.

the Parent “responded that the IEP was supposed to happen on January 5, 2022 when she asked for an IEP meeting.”

19. On February 1, 2022, the District response and records indicated that the Parent was provided a copy of the “Notice to Procedural Safeguards” and an “Invitation to Meet” with the Student’s special education team (administrator, special education teacher, speech language pathologist, general education teacher, and occupational therapist) for a meeting.

This meeting was originally scheduled for March 3, 2022. The purpose of the meeting was identified as “review of evaluation reports, eligibility determination and testing for three-year evaluation.” A prior written notice, dated February 1, 2022, proposed that the District would complete a three-year reevaluation at the District office because the Student’s “3 year re-evaluation is due and the team would like to be able to evaluate him.” Although the prior written notice was dated February 1, 2022, the document references contact made with the Parent on February 2, 2022 and re-scheduling the evaluation for February 7, 2022.

20. The District response indicated that a “position” to provide in-home services for the Student was approved for posting to hire someone on February 7, 2022.
21. In her complaint, the Parent asserted that the Student has not attended school during the 2021–2022 school year. The Student’s attendance records confirm that the Student did not attend any day or partial day of school from September 2, 2021 through February 8, 2022, a period of 95 school days and the equivalent of 19 school weeks. Attendance records provided by the District, printed February 23, 2022, indicated that, by that date, the Student had not attended 105 days of school during the 2021–2022 school year. In an email response, the District confirmed that the Student had not attended school on any date prior to March 16, 2022.
22. Upon inquiry from the OSPI complaint investigator, the District affirmed that, as of March 11, 2022, the Student’s team had not completed an FBA or BIP for the Student.

## CONCLUSIONS

**Issue 1A: Scheduling an IEP meeting with a properly constituted IEP team:** The Parent alleged that the District failed to respond to her concerns about the Student’s individualized education program (IEP), school refusal, and requests for IEP meetings.

When a parent requests an IEP team meeting or a student’s needs or change in need indicate an IEP meeting may be necessary, the team must include specific professional staff. An IEP team must include the parent, a general education teacher, special education teacher, a district employee who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources. The parent is to be formally invited to an IEP team meeting and provide notice of the IEP team members planning to attend the IEP meeting. Once an IEP team meeting is completed, a prior written notice is given to the parent with a copy of the revised or new IEP, so a parent is able to discern exactly what the district is planning to implement and if the



district has declined any of the parent's requests. 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 (FAPE).

Here, the Parent specifically requested an IEP meeting on December 9, 2021. The District's response to this complaint indicated that members of the Student's IEP team (PAVE, principal, special education teacher, occupational therapist, and parent advocate) met with the Parent on January 5, 2022. The District response indicated that the team discussed strategies for the Parent to improve the Student's ability to attend school and that the Parent requested in-home services. Although the District contends the meeting on January 5, 2022 was an IEP team meeting, the team did not include the Student's speech language pathologist or a general education teacher. This meeting was not attended, therefore, by a properly constituted IEP team as the general education teacher is a required member of the IEP team.

Additionally, with respect to the January 5, 2022 meeting, as with prior meetings on October 1, October 28, November 23, and December 15, 2021 that the District response referenced as IEP meetings, the District records do not include any meeting invitations, provision of the "Notice of Procedural Safeguards," any amendment or revision of the Student's IEP, and there were no prior written notices issued regarding any meeting. Importantly, notes from these meetings indicate potential changes to the Student's services were discussed that would impact his placement and receipt of a FAPE, such as a shortened school day or in-home services (a potential homebound placement). Changes such as these should be documented in a prior written notice, per the definition of a prior written notice.

Further, the previous meetings, like the January 2022 meeting, were not attended by all required IEP meeting members as the October, November, and December meetings were also missing a general education teacher.

Overall, the District's pattern of holding five meetings that were identified by the District as "IEP team meetings" without all required members present is a violation. While this complaint was opened specifically with respect to IEP team membership, OSPI cannot ignore the evidence that the District failed to follow other procedures associated with holding IEP meetings, such as meeting notice/invitation procedures and prior written notice procedures. Thus, OSPI finds a violation. The District will be required to conduct training for District special education staff on IEP meeting procedures. Additionally, the District will be required to hold an IEP meeting with a properly constituted IEP team and provide OSPI with a copy of the related meeting invitation and prior written notice.

**Issue 1B: Addressing the Student's school refusal behavior:** The Parent also alleged that the District did not properly responded to the Student's school refusal and had not convened his IEP team to address his learning needs.

Although IEPs are typically developed once each calendar year, if the student exhibits a change in need over the course of a year, the IEP team must convene to respond to the student's new needs. When a student engages in behavior that is not currently addressed by their IEP or an IEP team

receives recommendations from a medical or mental health provider, the IEP team should convene to decide whether additional evaluations, including a functional behavioral assessment (FBA), is needed to identify the student's educational and functional needs. If a student requires a change in their placement, including a change to a more restrictive placement, such as a homebound placement or a reduction in their school day, this decision is solely the decision of the student's IEP team. As explained in Issue 1(a), any decisions by the IEP team must be made by the entire IEP team and a prior written notice must be given to the parent after each IEP team decision so the parent is provided notice of any proposals the district will implement and any parental requests the district has declined.

The term "school refusal" is not defined by the IDEA or its regulations, nor is this term included in the "Diagnostic and Statistical Manual of Mental Disorders" (DSM-5), however, the National Institute of Health defines "school refusal" as a disorder of a child who refuses to go to school on a regular basis or has problems staying in school.<sup>3</sup>

In direct response to the Parent's emails in early September, the Student's special education teacher categorized his behavior as "school refusal" and this term was utilized by the District's response in numerous instances to document meetings and conversations with the Parent through the relevant period of this complaint. On January 3, 2022, the Parent provided medical documentation of the Student's "school avoidance" and recommendations. The documentation indicated the District communicated with the Parent regarding these concerns and held several informal meetings throughout the fall. It appears attempts were made to start addressing the Student's needs, such as discussing a re-entry plan, shortened school day, in-home services, and providing the Parent with resources (such as social stories). However, much of this occurred without the District following special education processes and procedures to address the Student's change in behavior and need.

While there is no one prescribed response for a district to follow in responding to a student exhibiting school refusal behaviors, there are multiple procedures required by the IDEA, federal and Washington special education regulations, to address student behaviors and changes in behavior or need, which were not utilized by the District:

- Despite the Parent's multiple emails regarding the Student's school refusal and his non-attendance at school, the District did not timely convene a *properly constituted* IEP team to discuss the Student's school refusal or its interference with the District's duty to implement his IEP as written, and whether the school refusal behaviors were related to the Student's disability.
- When provided the written recommendations from the Student's medical provider, the District did not appear to discuss or consider these recommendations with the Student's IEP team.
- The District did not provide the Parent with a "Notice of Procedural Safeguards" until February 1, 2022, at which point, the District attendance and other records indicate the Student had missed at least 89 school days.
- While the District did bring some members of the IEP team together to discuss school refusal strategies with the Parent throughout the fall, including on several instances suggesting that the Student be placed on a shortened day and offering in-home instruction, the District did not revise

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<sup>3</sup> Kawsar MDS, Yilanli M, Marwaha R. School Refusal. [Updated 2022 Feb 7]. In: StatPearls [Internet]. Treasure Island (FL): StatPearls Publishing; 2022 Jan. See also, <https://www.ncbi.nlm.nih.gov/books/NBK534195/>.

the Student's IEP or issue a prior written notice to the Parent to specifically reflect these District proposals.

- Despite suggesting a shortened school day and discussing in-home instruction, the IEP team does not appear to have followed procedures to address whether this would constitute a change of placement or whether it would be the Student's least restrictive environment, including issuing a prior written notice that the District was proposing a shortened school day or in-home instruction and the Student-specific, disability-related reasons for this proposed change.
- The District did not timely propose an FBA or other evaluation despite the Student's continued non-attendance to determine if the Student would benefit from additional supports and has not developed a behavior intervention plan (BIP).
- The District conditioned support from a BCBA upon the Student's return to the school environment, despite the challenge being that the Student was refusing to attend school, possibly for a disability-related reason. OSPI notes this email is concerning because how to provide support and what support is needed, such as BCBA support, should be an IEP team decision and as discussed in the points above, a properly constituted IEP team has not fully addressed this.
- The District did not implement any of the Student's IEP during the period relevant to the complaint, which under the *Van Duyn* standard constitutes a material failure of the District to implement Student's IEP and thus a denial of FAPE for the Student.

Again, while there is not a specific procedure defined to address school refusal behaviors, there are special education regulations that address responding to a change in behavior or need, including meeting procedures, FBAs, evaluation procedures, and change of placement procedures. The District's failure to properly respond to the Student's school refusal behaviors either through timely convening a properly constituted IEP meeting and considering whether an FBA was warranted to explore whether the school refusal behaviors were disability related—or other supports and services to address the Student's change in behavior—is a violation of the IDEA.

The fact that the Student did not attend 19 weeks of school during the period relevant to the complaint denied the Student a FAPE and meant the Student missed approximately 79 hours of adaptive instruction, 79 hours of social/emotional instruction, 285 hours of cognitive/academic instruction, 9.5 hours of speech services, and 4.75 hours of occupational therapy. The District will be required to consult with a behavior specialist/expert in school refusal, hold an IEP meeting, and provide the Student with the following compensatory education. There is no requirement to provide minute-for-minute compensatory education. Here, as part of the compensatory education will be provided in a 1:1 setting and generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting, OSPI finds 75% of the missed time to be an equitable remedy. Thus, the District will be required to provide 59 hours of adaptive instruction, 59 hours of social/emotional instruction, 214 hours of cognitive/academic instruction, 7 hours of speech, and 3.5 hours of OT.

### **CORRECTIVE ACTIONS**

By or before **April 15, 2022, April 29, 2022, May 6, 2022, May 20, 2022, June 3, 2022, July 22, 2022, September 30, 2022, January 20, 2023, and April 3, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

## **STUDENT SPECIFIC:**

### **Behavior Expert/Consultant**

By or before **April 29, 2022**, the District will hire a behavior private expert/consultant<sup>4</sup> to consult on the Student's school refusal behaviors and to collaborate with the Student's IEP team for the period of at least one school year from the date of hire—or at minimum through the development of the Student's next annual IEP created during the 2022–2023 school year.

By or before **May 6, 2022**, the District will provide OSPI with documentation that the behavior expert has been identified and a contract or other agreement is in place. This documentation could include a contract, memorandum of agreement, or other documentation of the agreement. The documentation should indicate the time period the consultant will work with the District and Student.

### **IEP Team Meeting**

By or before **May 16, 2022**, the District will convene a properly constituted IEP team, meaning an IEP team with all of the members required by Washington state regulations, to meet with the private consultant and the Parent. The IEP team should discuss the following, at minimum:

- Whether assessments, evaluations, or other data collection are required to determine the Student's academic, adaptive, and behavioral needs. Whether an FBA is needed.
- Review and revise the Student's IEP to ensure he is receiving specially designed instruction within his least restrictive environment.
- Discuss services, supports, and any needed assessments related to school refusal behaviors.
- Review the January 3, 2022 recommendations from the Seattle Children's Autism Center.

OSPI recommends the Student's IEP team consider using the "School Refusal Assessment Scale-Revised" developed by Dr. Christopher Kearney.

By or before **May 20, 2022**, the District will provide OSPI a copy of the following: 1) a copy of the meeting notice and/or invitation for the IEP meeting; 2) the prior written notice regarding decisions made at the April 22, 2022 meeting; and 3) a copy of the Student's IEP if it has been revised. OSPI will review the prior written notice and determine if additional documentation deadlines are required to monitor the implementation of any decisions made by the IEP team.

### **Compensatory Education**

By or before **May 16, 2022**, the District and Parent will develop a schedule for the following hours of compensatory education. OSPI notes this could occur at the above ordered IEP meeting or be a separate conversation. OSPI also recommends the consultant be involved as OSPI suspects the Student's school refusal behaviors may also impact his ability to access compensatory education.

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<sup>4</sup> OSPI recommends they consider working with the ESD's BCBA, a provider at the Seattle Children's Autism Center (where the Parent has already obtained recommendations), or contact Brooks Powers Group in Seattle, WA, <http://brookspowers.com>, to identify a consultant.

OSPI also recommends the schedule gradually increase the amount of compensatory education the Student is accessing.

- Adaptive and Social/Emotional: 59 hours each or 118 combined of instruction by a special education teacher implementing the Student's adaptive and social/emotional goals. OSPI notes this could be implemented in a group setting, such as a summer program attended by the Student in which he joins same aged peers in a recreation activity.
- Cognitive/Academic: 214 hours of individual instruction by a special education teacher implementing the Student's cognitive goals in the academic areas of math, reading and written expression.
- Speech: 7 hours of individual instruction by a speech language pathologist implementing the Student's speech and language goals.
- Occupational Therapy: 3.5 hours of individual instruction by an occupational therapist implementing the Student's motor goals.

After reaching agreement with the Parent, the District will provide the Parent with the schedule for services—in writing—by **May 20, 2022**, and will provide OSPI with documentation of the schedule for services by or before **May 20, 2022**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **March 31, 2023**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **July 22, 2022, September 30, 2022, and January 20, 2023** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **April 3, 2023**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **April 3, 2023**.

#### **DISTRICT SPECIFIC:**

##### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD, above required consultant, 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 22-11.

The following District staff will receive training: District special education administrators and psychologists, and the following at the Student's school: principal, assistant principal, and special

education certified staff (teachers), and general education teachers who have students with IEPs in their classes. The training will cover the following topics:

- IEP Meeting Requirements:
  - The requirement to respond to parent requests for IEP team meetings.
  - Required IEP team members, including general education teachers.
  - Requirements related to the provision of meeting invitations, procedural safeguards, and prior written notice.
- The requirement to convene a student's IEP team if the District team is unable to implement a student's IEP and when the circumstances warrant review of an IEP prior to an annual review due date.
- The District's responsibilities and associated special education options—such as conducting a functional behavioral assessment (FBA) when a student is exhibiting school refusal behavior.

The training will include examples.

By or before **April 15, 2022**, 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 **April 29, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by May 6, 2022.

By **May 27, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **June 3, 2022**, 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 \_\_\_ day of April, 2022

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
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.)