

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-54

PROCEDURAL HISTORY

On April 10, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student). The Student was in a juvenile detention facility with the education program run by the [REDACTED] (ESD). The Parent alleged that the ESD violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the ESD superintendent on the same day. OSPI asked the ESD to respond to the allegations made in the complaint.

On May 1, 2023, the ESD requested an extension of time to respond to the complaint. OSPI granted the extension to May 12, 2023.

On May 12, 2023, OSPI received the ESD's response to the complaint and forwarded it to the Parent on May 16, 2023. OSPI invited the Parent to reply.

On May 31, 2023, OSPI's investigator consulted with an OSPI program review staff person with experience with the implementation of special education services in Washington state's juvenile detention facilities.

On June 2, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the ESD the same day.

On June 5, 2023, OSPI's investigator conducted Microsoft Teams interviews of the ESD teacher, paraeducator, and director.

On June 1, 2023, OSPI requested additional information from the ESD. OSPI received said information on June 8, 2023. OSPI provided a copy of that information to the Parent the same day.

On June 8, 2023, OSPI received additional, unrequested information from the Parent. OSPI provided a copy of this information to the ESD the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 11, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. During the 2022–2023 school year, did ESD [REDACTED] materially implement the Student’s individualized education program (IEP)?
2. Did ESD [REDACTED] follow proper isolation procedures with the Student during the 2022–2023 school year?

LEGAL STANDARDS

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(i).

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. 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 [child with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student’s voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student’s behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult

responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. Additionally, any staff member using either isolation or restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques). WAC 392-172A-02110.

Imminent: Imminent as defined in RCW 71.05.020 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 71.05.020 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of emotional-behavioral disability.
2. The Student’s IEP team developed a behavioral intervention plan (BIP) for the Student on April 1, 2022. It addressed the following target behaviors: refusal/off task and verbal/physical aggression. The April 2022 BIP read, in part:
Intervention Strategies...Defined break locations and ways to signify need either verbally or visually...Locations available away from large group settings...Modeling throughout the day by trusted adults...Don't add more adults to the intervention unless absolutely necessary or a trade out is needed...Trusted adults as much as possible to support...Honor any agreed upon request...After appropriate time has been allowed after any large escalation or an appropriate interval has taken place provide a time to review behavioral rubric. This is an opportunity to self-advocate and goal set for a correction to be made if needed. Focus on positives and approach any corrections needed in connection to his future goals.

(emphasis in original).

2022–2023 School Year

3. The 2022–2023 school year began on August 29, 2022.
4. According to the Parent, the Student entered a juvenile detention facility on August 29, 2022 and began receiving services “within the [detention] facility by the [ESD] [beginning] September 2022.” (The ESD stated Student was admitted to the juvenile detention facility “on or about August 31, 2022.”)
5. At the start of the 2022–2023 school year, the Student continued to be eligible for special education services under the category of emotional-behavioral disability, was in the tenth grade, and the Student’s April 1, 2022 IEP was in effect.

The April 2022 IEP included annual goals in the following areas: reading comprehension; written language; math; behavior (task initiation and completion); behavior (limiting use of phone); social emotional (SE) (identify emotions and regulatory needs); SE (self-reflection on emotional dysregulation); and SE (planning for positive approaches).

The Student’s April 2022 IEP included, in part, the following accommodations: access to trusted adult; behavioral management system; behavioral reinforcement; extended breaks; regular positives check-in with focus on reviewing expectations regularly; regular reviews of school expectations; and staff proximity.

The April 2022 IEP provided the Student with the following nonconcurrent specially designed instruction (SDI) in a *special education setting*:

- SE: 180 minutes 5 times a week (to be provided by a paraeducator)

The April 2022 IEP provided the Student with the following concurrent SDI in a *special education setting*:

- Behavior: 60 minutes 5 times a week (to be provided by a paraeducator)
- Math: 30 minutes 5 times a week (to be provided by a special or general education teacher)
- Reading: 30 minutes 5 times a week (to be provided by a paraeducator)
- Written Language: 30 minutes 5 times a week (to be provided by a paraeducator)

The April 2022 IEP read, in part, “Student is currently working one-on-one with a tutor. Social emotional SDI is being delivered throughout the time in this setting. All other service minutes are happening during the scheduled time concurrently with the tutor.”

6. In its response, the ESD stated the April 2022 IEP provided the Student with “a total of 900 minutes per week of services.”

OSPI’s reading of the April 2022 IEP service matrix is that the Student was to receive a total of 1,200 minutes per week of services, comprised of: 900 minutes of nonconcurrent SDI in SE;

150 minutes of concurrent SDI in math, reading, written language, and behavior; and 150 minutes of nonconcurrent SDI in behavior¹.

7. The ESD's response included an exhibit the ESD stated represented the Student's schedule during the 2022–2023 school year. According to this schedule: each day of the week, the Student attended three 65-minute morning classes, two 60-minute afternoon classes, and 30 minutes of independent work time at the end of the day. The foregoing schedule provided the Student with a weekly total of 1,725 minutes of instruction each week.

8. According to the ESD:

The ESD staffs its educational program at the juvenile detention facility with one teacher and one paraeducator. The teacher and paraeducator provide services to students in a variety of different formats depending on individual need. Daily programing can be implemented by one staff member in the event the other is absent. The paraeducator is qualified to act as a substitute teacher in the event the teacher is absent.

ESD staff must operate the Education Program within the detention facility's structures and subject to the decisions detention staff make to ensure safety. Detention staff may determine to temporarily limit a student's access of the Education Program or specific program elements due to safety concerns.

Similarly, juvenile detention [administration] and/or a court may issue no-contact orders that prevent certain students from coming into contact with one another due to safety or other risks. ESD staff must adjust class schedules to ensure students subject to no-contact orders do not come into contact with one another. This is regularly achieved by splitting students into separate groups and rotating the groups between classes.

This typically does not affect students' access to programing because staff and facility capacity permit the ESD to operate two classes simultaneously. However, temporary reductions in class time may result if a student is subject to multiple no-contact orders because it may require that students be divided into three or more groups, which would then rotate through the two classes.

...

Student was frequently subject to no-contact orders during his detention. [ESD] staff addressed this through no-contact rotations that typically did not impact Student's program time. However, there were situations where the number of no-contact orders in effect caused a temporary reduction in programing due to the number of rotations required.

During this investigation, the ESD clarified that the ESD teacher at the juvenile detention facility did not have a special education certificate during the relevant time period (the time period during the 2022–2023 school year during which the Student was present at the juvenile detention facility), but that, as of June 2023, the ESD teacher was in the process of obtaining a special education certificate.

¹ By way of explanation, behavior, math, reading, and written language were to be provided concurrently. But the Student received a weekly total of 150 minutes of SDI in behavior that was in excess of the weekly totals the Student was supposed to receive in math, reading, and written language.

9. According to the Parent:

My son has an IEP accommodation to take a 'brain break.' This is written and intended to be utilized as a positive behavior intervention...ESD staff have...used it as a means of convenience and...to remove and...my son [from the educational setting and, instead, to be isolated] when displaying difficult behaviors manifested by his disability.

...

Student's cell is one similar to what you will find in a maximum-security facility.

According to the ESD:

The breaks could be initiated by Student or ESD staff. Once initiated, ESD staff did not control where the breaks occurred because the Educational Program is in a detention facility operated by [the juvenile detention facility] and its staff are responsible for students when outside the classroom. There are multiple spaces where the breaks could occur, including but not limited to the common areas of Student's housing unit or Student's room. Where individual breaks occurred was determined by detention staff and ESD is not privy to data related to the locations utilized, to the extent such data exists.

The Parent's reply read, in part, "There was *one* location breaks were able to occur and it is the only location breaks ever did occur, and that was isolated within Student's locked cell."

10. The ESD's response included "data documenting the implementation of the Student's services", including and showing the following:

- A calendar with notes drafted by either the teacher or paraeducator;
- A couple pages of a "tally sheet" for Student hours. Said tally sheet included entries between August 29, 2022 and March 27, 2023, and showed Student received instruction in language arts, health, science, math, social studies, and fitness;
- A one-page "growth mindset preassessment";
- Math and reading assessments, dated September 2022, November 2022, and January 2023;
- Service provider notes with entries dated between September 2022 and December 15, 2022, showing, in part: between November 15 and 18, 2022, ESD staff engaged behavioral reflection conversations with the Student; and between November 21 and 30, 2022, a ESD staff person left "sticky note [behavioral] feedback" for the Student; and,
- A reading log, with entries dated between August 31, 2022 and February 26, 2023, with said log being comprised of writing exercises the Student completed and reflections on books the Student read.

11. The ESD response also included documentation tracking those incidences during which the Student was removed from the instructional setting between December 2022 and March 2023.

Based on this documentation, there appear to have been four different categories of incidences during which the Student was removed from the instructional setting: (Category 1) breaks – inclusive of both staff-initiated and student-initiated breaks; (Category 2) "rotation of group"/"non-contact"; (Category 3) "support staff"; and (Category 4) professional development-related meetings that ESD staff had. (Category 3 encompassed activities, including, in part: nursing services; counseling sessions; doctors appointments; attorney meetings; court hearings; WISE team consultations; the imposition of "security status"

conditions by juvenile detention facility staff; a “detention training”; “Student will not follow safety plan”; and IEP meetings.)

In relation to Category 1, it appears: the Student initiated approximately 16 breaks;² ESD staff initiated approximately 6 breaks; the Student-initiated breaks totaled approximately 787 minutes, for an average length of approximately 50 minutes; the ESD-initiated breaks totaled approximately 177 minutes, for an average length of approximately 30 minutes.³

In relation to Category 2, it appears: there were approximately 32 incidences during which “rotation of groups” and/or “non-contact” reasons resulted in the Student leaving the instructional setting; and the total amount of time for Category 3 was approximately 1,845 minutes, or 31 hours.⁴

In relation to Category 3, it appears: there were approximately 80 incidences during which “support staff” reasons resulted in the Student leaving the instructional setting; and the total amount of time for Category 2 was approximately 3,742 minutes, or 62 hours.

In relation to Category 4, it appears: there were approximately 2 incidences during which professional development-related teacher meetings resulted in the Student not accessing instructional settings; and the total amount of time for Category 4 was approximately 90 minutes, or 1.5 hours.

12. The ESD’s response included a document entitled, “Reviewing behavior score with Student...throughout the day to ensure frequent feedback on his ability to follow expectations” (behavior review worksheet). According to the behavior review worksheet, ESD staff reviewed the Student’s behavior with him on the approximate number of occasions during the following months:

- August 2022: 1 time;
- September 2022: 18 times;
- October 2022: 17 times;
- November 2022: 12 times; and,
- December 2022: 6 times.

² A couple of these incidences of removal were characterized as “refusals,” wherein the Student did not present himself to ESD staff in the education setting.

³ In its response, the ESD arrived at slightly different figures. For example, the ESD’s response read, in part, “From December 1, 2022 to the end of his detention on March 31, 2023, Student took seven breaks initiated by ESD staff for a total of 82 minutes. In contrast, Student self-initiated 18 breaks for a total of 891 minutes.”

⁴ In its response, the ESD arrived at slightly different figures. For example, the ESD’s response read, in part, “The data shows no-contact rotations reduced Student’s program schedule by a total of 1,810 minutes from January 6, 2023 to March 31, 2023.” In its response, the ESD stated this did not result in a material failure to implement the Student’s IEP, though, because “Student’s program provided Student with an excess of 2,700 minutes beyond that called for in his IEP. The net result was Student received an excess of 890 program minutes beyond those called for in his IEP.”

(The ESD's response did not include behavior review worksheets past December 2022, though the ESD's response did include other related documentation. See below.)

13. The ESD's response included numerous sheets that consisted of the following: an excel row at the top of the page with the Student's daily behavior score (data excel worksheet). Below any particular data excel worksheet, notes could be found, often pertaining to either the Student's schedule that day or the behavior the Student demonstrated that day. The ESD's data excel worksheet included entries from August 31, 2022 through March 31, 2023.
14. The ESD's response included a document labeled "summary" that appears to summarize the total amount of instruction the Student received in various topics while at the juvenile detention facility, through March 29, 2023.

The summary presents the following: health (approximately 62 hours); math 1 (approximately 41 hours); math 2 (approximately 10 hours); and Spanish (approximately 9 hours). For the English Foundations I and Reading Skills and Strategies courses, the summary included "teacher name: null null." And no figure totals are listed for English Foundations I and the Reading Skills and Strategies courses.

15. According to the September 27, 2022 data excel worksheets, the Student became emotionally dysregulated that day after learning his daily behavior score.
16. In an October 26, 2022 email, the Parent requested that the Student's behavior needs be discussed at the IEP meeting scheduled for October 31, 2022.
17. The Student's IEP team met on October 31, 2022.

According to the Parent: prior to October 31, 2022, the Student's IEP included a component requiring ESD staff to "review behaviors daily with Student" but that this accommodation was not being implemented; on October 31, 2022, the Parent requested that ESD staff review the Student's behavior card⁵ with the Student, as a method to "impact his behaviors and...IEP goals in a positive way"; director did not believe specific mention of the "daily score" needed to be added to the IEP, stating that such an "accommodation already existed"; and subsequent to the October 31, 2022 meeting, the "Student was never provided his score from ESD staff." (In her reply, the Parent stated, in part, "It was decided by the IEP team to share Student's daily score with him.")

The October 2022 amended IEP included the same goals and accommodations as those in the April 2022 IEP. But the October 2022 amended IEP also included, for the first time, the following accommodation: timing and scheduling breaks.

⁵ According to the Parent, behavior cards were a creation of the juvenile facility and "impact[ed] Student's...ability to access privileges."

The October 2022 amended IEP kept the same totally weekly service times as in the April 2022 IEP.⁶ Two changes, though, were made: the provider for math SDI was changed to general education teacher; and the setting for all service areas was changed to a *general education setting*.

The October 2022 amended IEP read, in part, "Student is currently placed at [a juvenile detention facility. This is considered a *general education setting*. Detention staff are serving the IEP and are monitored by a special education teacher."

The October 31, 2022 prior written notice read, in part:

The IEP team discussed Student's behavior goal around appropriate cell phone use. Given the nature of the environment, the team decided to leave the goal in the IEP but recognized that Student does not have access to a cell phone and will not receive instruction on this goal.

The team...discussed reviewing Student's behavior card with him at the end of the day to ensure he has frequent feedback on his ability to follow classroom expectations.

18. The ESD's response included a behavioral data document. It included an entry, dated "November 1, 2022 through November 10, 2022," that read, in part:

Staff offered to review the score/feedback with Student and the Student declined. These conversations occurred at natural points during the school day and focused on positive and constructive feedback in moment. Staff noted that the Student was doing well, and detention staff provided the Student with a specific score every three days per detention center policy.

19. According to the Parent, at some point in early November 2022, the Student requested that the paraeducator provide him with his behavior card, the paraeducator refused, the Student became escalated, and then the paraeducator called juvenile detention staff, "to remove Student and place him in room confinement."

20. On November 3, 2022, the Parent requested compensatory education be provided to the Student. Later that day, the director replied via email, stating, in part:

Given that the impact on Student's schedule is due to a court order and the detention center's policy, the ESD will not be offering compensatory services...Student's IEP services have continued to be delivered in accordance with the IEP and Student is making meaningful educational progress towards his IEP goals.

21. On November 7, 2022, the director emailed the Parent, explaining, in part: juvenile detention staff possessed the ability to modify any particular student's schedule on a specific day due to "judge's orders"; and the ESD educational program at the juvenile detention facility had "two groups [of students] running throughout the day, with one group working on reading, ELA, health, and history in the morning and then the other group working on social/emotional,

⁶ The ESD stated, as a result of the October 31, 2022 IEP meeting, the team "increased Student's educational time from 900 weekly minutes to 1,500 weekly minutes." But OSPI does not see such an increase in totally weekly instruction time reflected in the two IEPs (April 2022 and October 2022).

mindfulness, PE, [and] library. In the afternoon students continue to work on math, science, word study, finances, career, and guest speakers.”

22. According to a November 15, 2022 email thread, on November 14, 2022: the Student wanted ESD staff to review his individual behavior score with him, as this score impacted the Student’s “life and privileges outside of the classroom environment”; the Student left for a counseling session prior to ESD staff being able to review the behavior score with the Student; the Student’s counseling session went “beyond the end of the contracted work day for ESD staff”; ESD staff therefore determined to review the behavior score with the Student during the morning of November 15, 2022; the Parent expressed concern the behavior review component of the IEP was not being followed; and the director stated, in part, “I have also asked the team to keep a log and to always initiate a conversation with Student about his scores.”
23. The November 15, 2022 entry for the behavioral data document read, in part:
A ESD staff member broached conversation with Student during a natural break in the day. Student stated they didn’t care about the feedback and only wanted to know a specific score. ESD staff explained that the score was a range, per detention policy, and offered to review that. Student escalated and detention staff ended the conversation. Student returned at 1:00 and another attempt was made to offer feedback, student verbally escalated, and detention staff ended the conversation at 2:00 pm.
24. The behavioral data document stated ESD staff engaged in a reflection conversation with the Student regarding his behavior on November 16, 2022, and that it was productive.
25. The behavioral data document included the following entries for November 17 and 18, 2022, “ESD staff attempted a conversation at 3:00 pm with the Student, the Student was verbally escalated by the attempt at the conversation and was escorted out by detention staff.”
26. Beginning November 18, 2022, the data excel worksheets no longer included the Student’s daily behavior score, as assigned by the juvenile detention facility staff, but the data excel worksheets continued to include anecdotal information on the Student’s behavior.
27. According to the Parent, “A decision was made by ESD staff and detention staff to remove the [behavior] scoring system completely from the educational setting on or around November 18, 2022 [but] behavior during school is still directly being shared by ESD teachers with detention staff.”

Between the November 18 and 21, 2022 entry on the behavioral data document, the following text appeared, “Detention staff have determined that they will provide the score feedback to the student moving forward. This is due to the level of disruption that was occurring within the facility. ESD staff have been providing the Student with written feedback, which the student stated was helpful.”

28. According to the ESD’s calendar, there was an instructional break from November 24–25, 2022.

29. On November 29, 2022, the ESD teacher emailed herself photos of six post-it notes that, upon knowledge and belief, contained behavioral feedback she had provided the Student. (The post-it note attachments to the email were not entirely readable.)

30. The Student's IEP team met on November 30, 2022.

According to the Parent, the Student's mental health providers (WISE) and herself were concerned with the ESD's "refusal to implement agreed-upon accommodations," and the Parent was concerned with the purported practice of ESD staff to utilize the Student's accommodation as a rationalization for isolating the Student.

31. The ESD's response included a December 1, 2022 post-it note that represents behavioral feedback provided to the Student by the ESD teacher.

32. A December 1, 2022 prior written notice read, in part:

The IEP team met to discuss the Parent's concerns that behavior data was not being shared with the Student on a daily basis...The team also discussed an instance where the Student was in a counseling session at the end of the school day and the ESD team did not interrupt the session to provide the behavioral score and instead followed up in the morning.

At this time, due to the Student's increased verbal aggression and emerging physical intimidation, the juvenile detention facility staff have stopped the ESD staff from providing behavioral feedback. The behavioral feedback is still collected from ESD staff, but the information will now be shared with the student by the juvenile detention facility staff. This change in practice was implemented program-wide at the direction of the juvenile detention facility staff. ESD staff noted that the Student is demonstrating the skills to receive written feedback rather than verbal feedback at this time. This scaffolding of behavioral feedback is in alignment with the strategies outlined in the Student's [BIP].

The Parent also expressed concern about the student missing class time due to staff-directed breaks. ESD staff clarified that there was one incident on 11/29/2022 where the Student was not able to follow directions, and they were prompted by staff to take a break in alignment with the [BIP]. When the juvenile detention facility staff stepped in to escort the student to their break, in accordance with Detention policy and procedure, the Student escalated, and county staff followed their procedures moving forward until the Student was able to regulate.

33. According to the ESD, "During the week of December 5, 2022, a unique situation arose in which Student was subject to multiple no-contact orders and the ESD teacher was out ill, which resulted in reduced programming for Student due to rotations and the absences of one of the two educators."

34. The Parent again requested compensatory education on December 12, 2022. The Parent stated, in part, "Last week, Student only received 30 minutes of education due to one of his teachers being out."

On December 13, 2022, the director emailed the Parent, stating, in part, "The ESD does not see substantive impact on the overall services that your son received while the staff member

was out ill." (In its response, the ESD stated, "The ESD rejected Parent's requests because the missed services did not impact Student's progress.")

35. According to a December 22, 2022 email from the director, in December 2022, the Student initiated a total of 3 breaks for a total of 86 minutes, ESD staff initiated 3 breaks for a total of 37 minutes, and juvenile detention facility staff initiated one break, for a total of 20 minutes.
36. The Student's IEP team met on or about December 22, 2022.

The accommodations and service matrix remained the same as those found in the October 2022 amended IEP. The December 2022 amended IEP included the same goals as those found in the October 2022 amended IEP, with the addition of the following two goals: SE (ability to successfully navigate conflict) and written expression (ability to utilize writing to address emotional dysregulation).

A December 22, 2022 prior written notice read, in part:

The team added two goals focused on developing Student's ability to successfully navigate conflict with others and recognized that during his stay in detention, portions of the BIP needed to be adjusted to reflect the nature of the facility.

...

The following adjustments are being made to the [BIP] due to the temporary nature of the detention facility. The team wanted to wait to formally adjust the [BIP] due to Student's length of stay being unknown.

Antecedent adjustments, staff will offer [a] teaching model in place of Student being able to take a walk or play basketball to de-escalate. This is because this option is not readily available in the detention setting. It should be noted that students are only allowed to have pencils in their cells on levels 4 and 5.

Teaching Strategies: Detention staff will post a visual schedule in the units for students. This is to support Student in adjusting to unexpected changes or scheduling shifts that can occur. It is noted that some scheduling changes arise with very little notice or are responsive to the situations within detention and can only sometimes be communicated in advance verbally or visually.

The December 2022 prior written notice also included language related to specifying the nature of dialogue ESD staff would have regarding helping the Student process moments of emotional dysregulation.

37. According to the ESD's calendar, there was an instructional break from December 23, 2022 through January 2, 2023.
38. According to ESD documentation, either the paraeducator or the teacher was absent on January 23, 2023.
39. The ESD's response included progress reporting, dated January 25, 2023:
 - Reading comprehension: sufficient progress;

- Written language: sufficient progress;
- Written expression (ability to utilize writing to address emotional dysregulation): emerging skill;⁷
- Math: sufficient progress;
- Behavior (task initiation and completion): sufficient progress;
- Behavior (limiting use of phone): not provided instruction on this goal;
- SE (identify emotions and regulatory needs): sufficient progress;⁸
- SE (self-reflection on emotional dysregulation): sufficient progress;
- SE (planning for positive approaches): sufficient progress; and,
- SE (ability to successfully navigate conflict): emerging skill.⁹

40. On March 11, 2023, the director emailed the ESD teacher and paraeducator that worked at the juvenile detention facility, asking for present levels on many of the Student's IEP goals.

41. In a March 13, 2023 email, the ESD teacher stated, in part, "Student was on security status most of last week and we were not able to reassess his reading."

42. On March 29, 2023, the Student's IEP team developed a new IEP. The related prior written notice, dated March 31, 2023, read, in part:

The IEP team met to review Student's annual IEP and BIP. The team is proposing continuing the IEP with updated goals.¹⁰ Student has...mastered his goals from the previous IEP.

...

Parent expresses wonderings about how breaks will be navigated and supported in the detention facility with the factor of detention staff. If Student requests to return to class within the 10-minute timeframe and is unable to, due to staff availability or refusal, how would progress be tracked? The IEP team could consider monitoring the point that Student requests to return and collect latency data around the amount of time between the request and Student's return to class.

⁷ This entry read, in part, "Student has been maintaining a high standard of behavior in our program since this goal was developed. Since Student has been successfully self-regulating, there have been no behavioral incidents that merit a written reflection at this time. This is a new goal for Student and he has received about a month of instruction on it."

⁸ This entry read, in part, "Student requests brain breaks as needed. At times when Student becomes dysregulated, Student will be directed to take a break. This occurs infrequently in our setting."

⁹ This entry read, in part, "Student is still working on progressing toward the goal of sharing his perspective and listening to staff's perception regarding navigating conflict. When able to self-regulate, Student can articulate his perspective appropriately and listens to staff statements. When dysregulated, Student has difficulty interacting with staff in a non-confrontational manner. This is a new goal for Student and he has received about a month of instruction on it."

¹⁰ The ESD's response did include mid-March through late-March 2023 emails, wherein certain IEP team members, including, on occasion, the Parent, discuss revising the language for some of the Student's IEP goals.

The March 2023 IEP had the same weekly service totals and areas of instruction as that found in the December 2022 amended IEP.

43. On March 29, 2023, the ESD teacher emailed the director, stating, in part:

Student and I met regarding replacement language for escalations. He thinks he can work with something like this when he is angry or upset: 'I need a few minutes. Then can we talk?'...He talked about some of the strategies he would implement during the cool down time, including things he's learned from his counseling team here, such as breathing exercises [and the] WAIT [exercise of] 'Why am I tripping?'

44. A March 29, 2023 BIP read, in part:

Since January 2023, Student has been removed from class six times. The escalations have consisted of verbal aggression, typically in the mid-part of the school day, and are associated with staff requests...Student's ability to self-select locations and access to personal items is impacted [by his placement in a juvenile correctional facility]. This should be noted because the controlled setting doesn't allow for the same antecedents, behavior, and consequences that were previously present in a comprehensive school setting.

The March 2023 BIP targeted refusal/off task behavior. The March 2023 BIP referenced teaching and modeling strategies for improving the Student's ability to emotionally regulate, but OSPI did not see a reference to a visual schedule in the March 2023 BIP.

45. According to the ESD, the "Student exited [the juvenile detention facility] on March 31, 2023."

The ESD's response did include what appeared to be an exit letter, summarizing certain aspects of the Student's time while at the juvenile detention facility, dated March 31, 2023. The letter read, in part, "Total class hours in juvenile detention facility education program: 567." The letter stated the Student earned credits in language arts, health, math, fitness and conditioning, and interdisciplinary/elective.

46. During this investigation, the ESD did provide staff attendance data, showing the teacher missed approximately 16 days from late August 2022 through late March 2023, and that the paraeducator missed approximately 15 days during this same time period.

47. On June 5, 2023, OSPI's investigator conducted interviews of the ESD teacher, paraeducator, and director. OSPI's investigator's notes from those interviews consist, in part, of the following:

- The director possessed a special education certificate. The ESD teacher did not possess a special education certificate, but was in the process of obtaining one;
- During her interview with OSPI's investigator, the director stated she collaborated with the teacher and the paraeducator regarding the design and provision of specially designed instruction to the Student at least once a month, and occasionally, every two weeks. The director stated she was either physically present at the juvenile detention facility on those occasions, or she consulted with the teacher and the paraeducator via Zoom;
- When a student with an IEP transferred into the juvenile detention facility, the teacher and the paraeducator had a formalized system in place for gathering relevant IEP documentation from the previous ESD and collaborating on how to implement the student's IEP services within the context of the juvenile detention facility;

- The director typically only engages with the teacher and the paraeducator in the initial IEP collaboration for students with particularly significant needs, and she stated she did not engage with the teacher and the paraeducator in the initial IEP collaboration for this specific Student;
- Breaks were connected to the Student's social-emotional and behavioral goals, in particular, to the Student's ability to self-advocate, emotionally regulate, and complete tasks. And, that the breaks were helpful to the Student;
- The director, the teacher, and the paraeducator were each able to speak—in detail—about the Student's IEP goals, both what those goals were, and how ESD staff worked with the Student on those goals while the Student was at the juvenile detention facility;
- When the Student took a break, the Student could take that break in any number of locations, including, in part, the classroom, a room or hallway nearby the classroom, or the Student's living facility;
- The paraeducator explained there was an "indoor-outdoor" room located on the same floor as the instructional setting, which was a large room that permitted air to flow in from the outside, and which served as the location for various physical-fitness-related activities; and,
- ESD staff explained to OSPI's investigator that within the Student's living facility, there were both open communal spaces and the students' individual rooms. ESD staff believed that both the communal space and the individual room was utilized at various times during the 2022–2023 school year when the Student took breaks.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the ESD did not implement the Student's IEP during the 2022–2023 school year. Specifically, the Parent alleged: (1) because of staff absences and the overutilization of accommodations breaks, the ESD did not provide the Student with the total amount of specially designed instruction that was required by the IEP; and (2) the ESD did not properly implement the accommodation of behavioral feedback.

When an ESD does not perform exactly as called for by the IEP, the ESD 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.

Amount of Specially Designed Instruction

In relation to the Parent's allegation that the ESD did not provide the Student with the total amount of specially designed instruction that was required by the IEP, OSPI makes four conclusions.

First, the Student did receive specially designed instruction in social emotional, behavior, math, reading, and written language. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum; and, staff without special education certificates, such as general education teachers and paraeducators, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff.

And this investigation showed:

- The director—who possessed a special education certificate—collaborated with the teacher and the paraeducator regarding the design and provision of specially designed instruction to the Student one to two times each month;¹¹
- When a student with an IEP transferred into the juvenile detention facility, the teacher and the paraeducator had a formalized system in place for gathering relevant IEP documentation from the previous district and collaborating on how to implement the student’s IEP services within the context of the juvenile detention facility;
- During their respective interviews with OSPI’s investigator, the director, the teacher, and the paraeducator were each able to speak—in detail—about the Student’s IEP goals, both what those goals were, and how ESD staff worked with the Student on those goals while the Student was at the juvenile detention facility;
- The ESD’s response included, in part: pages of a “tally sheet” that included entries between August 29, 2022 and March 27, 2023 that showed the Student received instruction, in part, in language arts, math, health, and fitness; math and reading assessments dated September 2022, November 2022, and January 2023; a reading log with entries dated between August 31, 2022 and February 26, 2023, including writing exercises the Student completed and reflections on books the Student read; and a “summary” document showing, in part, the Student received approximately 62 hours of instruction in health and approximately 51 hours in math; and,
- The documentation provided to OSPI during this investigation included progress reporting data, dated November 3, 2022, January 25, 2023, and March 29, 2023. And that progress reporting data showed, generally, the Student made sufficient progress on his IEP goals while at the juvenile detention facility.¹² The director, teacher, and paraeducator also all related that the Student made significant progress on IEP goals during his time at the juvenile detention facility.

In sum, the above facts show the Student did receive specially designed instruction in social emotional, behavior, math, reading, and written language while at the juvenile detention facility.

Second, though the Student did receive specially designed instruction while at the juvenile detention facility, the Student did not start receiving specially designed instruction until approximately two weeks after arriving at the facility and during the relevant time period, the ESD teacher did not possess a special education certificate. The director stated she did not begin her collaboration with the teacher and paraeducator on design and supervision of specially designed instruction until a couple weeks after the Student arrived at the juvenile detention facility. By way of explanation, as stated above, when a student with an IEP transferred into the juvenile detention facility, the teacher and the paraeducator had a formalized system in place for gathering relevant

¹¹ During her interview with OSPI’s investigator, the director stated she collaborated with the teacher and the paraeducator regarding the design and provision of specially designed instruction to the Student at least once a month, and occasionally, every two weeks. The director stated she was either physically present at the juvenile detention facility on those occasions, or she consulted with the teacher and the paraeducator via Zoom.

¹² OSPI does note, as of January 25, 2023, progress reporting data noted the Student was at the “emerging skill” level for the following two IEP goals: Written expression (ability to utilize writing to address emotional dysregulation); and SE (ability to successfully navigate conflict). But it is important to note these goals were new with the December 2022 amended IEP.

IEP documentation from the previous district and collaborating on how to implement the student's IEP services within the context of the juvenile detention facility (initial IEP collaboration). But in her interview with OSPI's investigator, the director stated she typically only engages with the teacher and the paraeducator in the initial IEP collaboration for students with particularly significant needs, and that she did not engage with the teacher and the paraeducator in the initial IEP collaboration for this specific Student. Accordingly, the Student would not have begun receiving specially designed instruction—instruction that is designed and supervised by someone with a special education certificate—until the director collaborated with the teacher and the paraeducator, either during one of her visits to the juvenile detention facility or during a Zoom call. And the investigation shows these collaborations took place one to two times each month. This, therefore, is an IDEA violation. As a remedy, the ESD will be required to develop a policy that ensures an individual with a special education certificate is involved in designing and supervising the provision of specially designed instruction to students that transfer into the juvenile detention facility with IEPs, from the earliest step in that process.

Third, OSPI finds the ESD did properly implement the accommodation of providing the Student with breaks, and that staff did not over-utilize the breaks accommodations. The Student's April 2022 BIP and IEP provided the Student with the intervention of "defined break locations" and accommodation of "extended breaks." This investigation supported several conclusions:

- In relation to the other exigencies that resulted in the Student being absent from the educational setting, see below, the Student taking breaks resulted in the Student being absent for a comparatively smaller amount of time. For example, between December 2022 and March 2023, it appears the Student was absent from the educational setting for breaks approximately 16 hours, whereas it appears, during this same time period, "rotation of groups" resulted in the Student being absent from the educational setting for approximately 31 hours and "support staff" resulted in the Student being absent from the educational setting for approximately 62 hours;
- The Student initiated more breaks than did ESD staff;
- The Student-initiated breaks generally lasted longer than those breaks initiated by ESD staff; and,
- Based in part on the staff interviews conducted by OSPI's investigator, the breaks were connected to the Student's social-emotional and behavioral goals, in particular to the Student's ability to self-advocate, emotionally regulate, and complete tasks. And, that the breaks were helpful to the Student.

In sum, for the above reasons, OSPI finds the ESD did properly implement the accommodation of providing the Student with breaks.

Fourth, in terms of determining the amount of IEP services provided to the Student during his time at the juvenile detention facility during the 2022–2023 school year, OSPI notes the Student was enrolled in the juvenile detention facility from August 29, 2022 through March 31, 2023. This represents approximately 23.5 weeks of instruction.

Under the IEP service matrices that were in effect during the Student's time at the juvenile detention facility, the Student was to receive a total of 20 hours (or 1,200 minutes) per week of

services.¹³ The total amount of instruction, then, that the Student should have received between August 29, 2022 and March 31, 2023 would be approximately 470 hours of instruction.

The Student's schedule provided the Student with a weekly total of approximately 29 hours (or 1,725 minutes) of instruction. So, if the schedule had been perfectly adhered to, from August 29, 2022 through March 31, 2023, the Student would have received approximately 682 hours (or 40,890 minutes) of instruction. Thus, if the schedule had been perfectly adhered to, the Student would have received specially designed instruction in excess of what was required by the respective IEPs.

But this investigation showed there were four different categories of incidences during which the Student was removed from the instructional setting: (Category 1) breaks; (Category 2) "rotation of group"/"non-contact"; (Category 3) "support staff;"¹⁴ and (Category 4) professional development-related meetings that ESD staff had.

For Category 1, the Student was removed from the instructional setting for approximately 16 hours. For Category 2, the Student was removed from the instructional setting for approximately 31 hours. For Category 3, the Student was removed from the instructional setting for approximately 62 hours. For Category 4, the Student was removed from the instructional setting for approximately 1.5 hours. In total, then, accounting for all Categories, the Student was removed from the instructional setting for approximately 111 hours.

As noted above, had the schedule been perfectly adhered to, the Student would have received approximately 682 hours of instruction. But, as demonstrated with the immediately preceding paragraph, the Student did not access approximately 111 hours of this instruction. Therefore, from August 29, 2022 through March 31, 2023, OSPI finds the Student to have accessed approximately 571 hours of specially designed instruction.

Importantly, 571 hours of specially designed instruction is more than the 470 hours of specially designed instruction that was required by the IEP. Additionally, generally, the Student made progress on IEP goals during his time at the juvenile detention facility; the director, teacher, and paraeducator, during their respective interviews with OSPI's investigator, were able to speak in a detailed fashion regarding the Student's IEP goals; and the documentation provided to OSPI included various work samples.¹⁵ For the foregoing reasons, OSPI finds the ESD to have materially

¹³ The ESD stated, as a result of the October 31, 2022 IEP meeting, the team "increased Student's educational time from 900 weekly minutes to 1,500 weekly minutes." But OSPI does not see such an increase in weekly instruction time when comparing the service matrices of the two IEPs (April 2022 and October 2022).

¹⁴ Category 3 encompassed numerous types of activities that resulted in the Student being removed from the instructional setting, including, in part, nursing services, counseling sessions, doctors appointments, attorney meetings, court hearings, WISE team consultations, the imposition of "security status" conditions by juvenile detention facility staff, a "detention training," "Student will not follow safety plan," and IEP meetings.

¹⁵ The ESD did provide staff attendance data, showing the teacher missed approximately 16 days from late August 2022 through late March 2023, and that the paraeducator missed approximately 15 days during this

implemented the Student's IEP between August 29, 2022 through March 31, 2023. OSPI does not find a violation of the IDEA on this issue.

Behavioral Feedback

The Parent alleged the IEP required ESD staff to share the Student's daily behavior score with the Student, and it was an error for ESD staff to stop providing the Student with notification of his daily behavior score beginning in mid-November 2022.

Here, OSPI makes the following conclusions. First, while the Student's IEP documents did require that ESD staff regularly review the Student's behavioral performance with the Student, the Student's IEP documents do not reference the daily behavior score. For example, the April 2022 BIP read, in part, "After appropriate time has been allowed after any large escalation or an appropriate interval has taken place provide a time to review behavioral rubric." And the April 2022 IEP included, in part, the following accommodations: behavioral management system; behavioral reinforcement; regular positives check-in with focus on reviewing expectations regularly; and regular reviews of school expectations. In sum, the April 2022 IEP and BIP required that behavioral feedback be provided to the Student, but these documents did not require that ESD staff provide the Student with his daily behavior score.

Second, there appears to have been some confusion in fall 2022 regarding the nature of the behavioral feedback that needed to be provided to the Student. As detailed above, neither the April 2022 IEP nor the April 2022 BIP mentioned the daily behavior score. In the fall 2022, though, ESD staff regularly provided the Student with the daily behavior score. The October 31, 2022 prior written notice included slightly unclear language, "The team...discussed reviewing Student's behavior card with him at the end of the day to ensure he has frequent feedback on his ability to follow classroom expectations." Notably, the PWN did not specify what decision was reached regarding the sharing of the behavior card. The daily behavior score stopped being shared with the Student on or about November 18, 2022, and this development was reflected in an entry in the behavioral data document. Ultimately, the December 1, 2022 prior written notice clarified that ESD staff would no longer provide the Student with his daily behavior score. In other words, in fall 2022, there was some confusion regarding the nature of the behavioral feedback that needed to be provided to the Student, but the ESD clarified this matter with a timely prior written notice.

Third, this investigation showed that juvenile detention facility staff retained principal authority for the creation and management of the daily behavior score, and that this score was connected to whether the Student could enjoy certain privileges when outside the educational setting. For

same time period. This fact, though, does not impact OSPI's final conclusion. First, in both of their interviews, the teacher and the paraeducator detailed that each day's schedule was different, and could be adjusted as-needed to serve a student's particular needs, including the occasion of a staff person being absent. And, in responsive communications during this investigation, the ESD explained, in part, "the paraeducator and teacher provided coverage for each other." Finally, the above observations regarding the Student's generally consistent progress, work samples, and staff's knowledge of the Student's IEP goals are also relevant to this conclusion.

example, an entry on the behavioral data document, dated approximately November 19, 2022 read, in part, "Detention staff have determined that they will provide the score feedback to the student moving forward," and the December 1, 2022 prior written notice stated the juvenile detention facility staff "stopped ESD staff from providing" the daily behavior score to the Student because of the "increased verbal aggression and...physical intimidation" the Student occasionally demonstrated when the score was shared.¹⁶ In sum, the creation and management of the daily behavior score appears to have been outside the control of ESD staff.

Fourth, as detailed above, the data excel worksheets, behavioral data document, behavior review worksheet, "growth mindset preassessment", service provider notes, emails, prior written notices, and progress reporting all show ESD staff regularly provided the Student with feedback on his behavioral performance while he attended the juvenile detention facility from August 2022 through the end of March 2023.

For the foregoing reasons, OSPI does not find a violation of the IDEA; the ESD properly implemented the portion of the Student's IEP that required ESD staff to provide the Student with feedback on his behavioral performance.

Issue 2: Isolation Procedures – The Parent alleged the ESD did not follow proper isolation procedures. Specifically, the Parent alleged the Student was isolated (as that term is defined under the IDEA) whenever the Student left the educational setting when exercising the accommodations of breaks.

Isolation means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm; restraint and isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

This investigation showed, in part, that when the Student took a break, the Student could take that break in any number of locations, including, in part, the classroom, a room or hallway nearby the classroom,¹⁷ or the Student's living facility.¹⁸ With the exception of in-classroom breaks, at

¹⁶ The documentation did support this conclusory statement in the December 1, 2022 prior written notice. For example, collectively, the data excel worksheets and behavioral data documents showed the Student became escalated on the following dates, when the daily behavior score was discussed: September 27, November 15, 17, and 18, 2022.

¹⁷ The paraeducator explained there was an "indoor-outdoor" room located on the same floor as the instructional setting, which was a large room that permitted air to flow in from the outside, and which served as the location for various physical-fitness-related activities.

¹⁸ ESD staff explained to OSPI's investigator that within the Student's living facility, there were both open communal spaces and the students' individual rooms. ESD staff believed that both the communal space

least one juvenile detention facility staff always accompanied the Student when on his breaks; ESD staff did not accompany the Student when on his breaks. And, the Student had some discretion over when his break should end, as a practice ESD staff tried to inculcate in the Student was the ability to emotionally regulate and then self-advocate for a return to the classroom.

For two principal reasons, OSPI does not find a violation of the IDEA in relation to the isolation allegation.

First, when the Student was outside the educational setting, different isolation rules were controlling, namely, those criminal justice isolation rules that are applicable to juvenile detention facilities. OSPI does not have the authority under the community complaint process to impose special education isolation rules on non-educational settings at juvenile detention facilities.

Second, for at least three of the four different locations ESD staff mentioned the Student took his breaks, it is unlikely the Student would have been isolated, as that term is defined under the IDEA. For example, when the Student was taking a break in the classroom, the Student would not have been isolated, as the Student would not have been alone. Similarly, as at least one juvenile detention facility staff always accompanied the Student during his breaks, it is unlikely the Student was alone when the Student was making use of either the indoor-outdoor room or the communal living area for his breaks. For the above reasons, OSPI does not find a violation of the IDEA.

Regardless, OSPI makes two recommendations to the ESD.

Recommendation One: To the extent any student with an IEP has the accommodation of as-needed breaks, that that student's IEP team discuss strategies and/or methods for permitting that student to take said breaks in the classroom to avoid potential isolation by juvenile detention staff.

Recommendation Two: To the extent any student with an IEP has the accommodation of as-needed breaks, and that student will be taking those breaks within the vicinity of the educational setting, such as in an adjoining room or hallway, that the ESD develop policies and/or procedures that permit ESD staff to be involved in monitoring those breaks, in part, to ensure positive behavioral interventions can be implemented during that time.

CORRECTIVE ACTIONS

By or before **June 30, 2023** and **July 12, 2023**, the ESD will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

and the individual room was utilized at various times during the 2022–2023 school year when the Student took breaks.

ESD SPECIFIC:

Development of ESD Policy

By or before **June 30, 2023**, the ESD will be required to develop a policy that ensures an individual with a special education certificate is involved in designing and supervising the provision of specially designed instruction to students that transfer into the juvenile detention facility with IEPs, from the earliest step in that process.

By or before **June 30, 2023**, the ESD will provide OSPI with a copy of said policy. By or before July 7, 2023, OSPI will review said policy and provide any necessary feedback and/or editing requirements.

By or before **July 12, 2023**, the ESD will ensure the policy is disseminated to all relevant individuals. And, by or before **July 12, 2023**, the ESD will provide OSPI with documentation showing said dissemination has taken place.

The ESD 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.

RECOMMENDATIONS

OSPI recommends that to the extent any student with an IEP has the accommodation of as-needed breaks, that that student's IEP team discuss strategies and/or methods for permitting that student to take said breaks in the classroom to avoid potential isolation by juvenile detention staff.

And, to the extent any student with an IEP has the accommodation of as-needed breaks, and that student will be taking those breaks within the vicinity of the educational setting, such as in an adjoining room or hallway, OSPI recommends that the ESD develop policies and/or procedures that permit ESD staff to be involved in monitoring those breaks, in part, to ensure positive behavioral interventions can be implemented during that time.

Dated this 8th day of June, 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 ESDs 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 ESDs 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.)