

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-72

PROCEDURAL HISTORY

On May 24, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 24, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 25, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 12, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 16, 2023.

On June 16, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 20, 2023. OSPI invited the Parent to reply.

On June 20, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 21, 2023.

On June 20 and 21, 2023, OSPI requested additional information from the District. OSPI received that information on June 21 and 22, 2023, and forwarded the additional information to the Parent on the June 22, 2023.

On June 22 and 23, 2023, OSPI received additional information from the Parent. OSPI forwarded that additional information to the District on June 22 and 24, 2023.

On June 26, 2023, OSPI requested additional information from the District. OSPI received that information and forwarded it to the Parent on the same day.

On June 27, 2023, OSPI requested additional information from the District. OSPI received that information and forwarded it to the Parent on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 25, 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. Since May 25, 2022, has the District had a functional behavioral assessment (FBA) in place for the Student?
2. Since May 25, 2022, has the District been appropriately implementing the Student's individualized education program (IEP) according to WAC 392-172A-03105 and -03110?

LEGAL STANDARDS

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district: (a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and (b) Develops and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110. See WAC 392-172A-03105(5).

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures (OSERS June 2009)* (Question E-1 and E-2). See also WAC 392-172A-01142 regarding positive behavioral interventions.

Functional Behavioral Assessment (FBA): If the district, parent, and relevant members of the IEP team determine that a student's conduct that gave rise to a change in placement (i.e., a removal for more than 10 consecutive school days or a series of removals that constituted a pattern WAC 392-172A-05155) was a manifestation of the student's disability, the IEP team must: (1) Conduct an FBA (provided the district had not conducted such assessment prior to the conduct at issue) and implement a BIP for the child; or (2) if a BIP has already been developed, review the plan and modify it, as necessary, to address the behavior; and, (3) except when the student is removed to an alternate interim educational setting, return the child to the placement from which he was

removed, unless the parent and district agree to a change in placement as part of the modification of the BIP. See WAC 392-172A-05147.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed.

FINDINGS OF FACT

Background: 2021–22 School Year

1. September 1, 2021 was both the Student's first day of school in the District, and the District's first day of instruction for the 2021–22 school year. The Student was enrolled in a District elementary school as a fifth grader and was eligible for special education under the category of emotional behavioral disability. The Student's out of state IEP, dated April 27, 2021, was in effect. It provided specially designed instruction (SDI), as follows:
 - Specialized Academic Instruction: 120 minutes/1 time daily (general education setting)
 - Individual Counseling: 30 minutes/ 4 times monthly (special education setting)
 - Mental health counseling (30 minutes 4 times a month).

There was also a behavioral intervention plan (BIP) in place.

2. In its June 16, 2023 response to the present complaint, the District expressed:
The district did not fully implement this IEP that was received from [the out of state school district]...Notwithstanding the issues with the IEP transfer process, the [District] team should have met and implemented a new evaluation and IEP for the student in a timely manner as part of the transfer process.

3. During the 2021–22 school year, the Student was suspended as follows:

Suspension Date	Days Suspended	Reason
October 19, 2021	1	Pushing peer/cursing at staff
December 14, 2021	2	Throwing objects at staff
March 16, 2022	2	Fighting with peer/ignoring instructions
March 22, 2022	1.5	Inappropriate language
March 24, 2022	2.5	Fighting with peer
May 2, 2022	3.5	Striking staff/inappropriate language

4. On April 20, 2022, the Student’s team met to review his triennial reevaluation. Based on the reevaluation report, the evaluation group only recommended the Student receive social emotional instruction.

5. On May 25, 2022, the investigation period began in the present complaint investigation.

6. On June 10, 2022, the Student’s IEP team met. The Student’s IEP included SDI to be provided by a general education teacher, in a general education setting, as follows:

- Social/Emotional: 15 minutes/4 times weekly

The Student received 1,800 minutes per week of building instructional time, with zero minutes served in the special education setting. The percent of time in a general education setting was 100%. The Student’s LRE was 80–100%.

The Student’s IEP team did not develop a new or updated BIP.

2022–23 School Year

7. On September 1, 2022, the District had its first day of instruction for the 2022–23 school year. The Student was enrolled in a District elementary school as a sixth grader and continued to be eligible for special education services. At this time, the Student’s June 10, 2022 IEP was in effect.

8. On October 22, 2022 and through February 27, 2023, the Student received 1:1 instruction with the counselor for 30 minutes each Monday, Tuesday, and Wednesday mornings. This was an intervention for the Student and took the place of the social emotional curriculum that his general education class was getting at the time.

9. According to the District, at this time, the Student’s social/emotional SDI consisted of check-ins with his general education teacher. Those check-ins occurred five times a week (Monday–Wednesday, 10-minute check-in each day; Thursday–Friday, 15-minute check-in each day).

10. During the 2022–23 school year, the Student was suspended¹ as follows:

¹ The Parent has expressed multiple times that the District’s attendance records do not accurately reflect the many days in which she was called to school to pickup the Student early because of behavior issues.

Suspension Date	Days Suspended	Reason
October 11, 2022	2	Inappropriate language, ignoring instructions, throwing objects at staff
January 4, 2023	2.5	Brought a knife to school ²
February 16, 2023	4.5	Striking staff, ignoring instructions
March 24, 2023	3 ³	Inappropriate language and actions toward staff

11. On February 23, 2023, the IEP team decided to conduct an FBA and a reevaluation of the Student.

12. On February 27, 2023, the Student’s IEP team met and amended the Student’s IEP. The Student’s IEP, in effect February 28–April 20, 2023, provided SDI, provided by a paraeducator in a special education setting, as follows:

- Social/Emotional: 40 minutes/4 times weekly

The Student received 1,710 minutes per week of building instructional time, with 160 minutes served in the special education setting. The percent of time in a general education setting was 90.64%. The Student’s LRE was 80–100%.

13. On February 27, 2023, the District and Parent had a meeting and established that there was not an FBA from the out of state district.

14. A prior written notice (PWN), dated February 28, 2023, stated, in part:

The district proposes to implement the amended IEP, which adds additional special education minutes in social emotional to 40 minutes a day 4 days a week, update present levels of performance, and write a new goal based around coping strategies for [Student] to use in a school setting.

During the meeting it was also decided that a re-evaluation and Functional Behavior Assessment are needed at this time as well as a release of information for the school and the doctors office to be able to exchange information. After the FBA is conducted a Behavior Intervention Plan will be implemented.

...

We are increasing the duration of his specialized instruction in social emotional because his current services are not sufficient to progress his coping skills as evidenced by his increase in behavior in the general education setting.

According to the Parent, these days, along with the days the Student was suspended, resulted in the Student missing a significant amount of his education.

² A threat assessment was conducted on the Student, and it remained at level 1.

³ On March 27, 2023, a manifestation determination meeting was held, and this suspension was shortened to one day.

We are proposing to re-evaluate and conduct a functional behavior assessment (FBA) because the team has concerns about his physical development as it related to his medications and there are also concerns about the accuracy of the previous assessment.

...

[The Student] was suspended for 4.5 school days due to a behavior related incident prior to this meeting. As part of a safety plan/re-engagement plan [the Student] will have a para educator shadow him for the first few weeks back to school during particularly difficult times for him which include recess, PE and Science. After two weeks we will evaluate the effectiveness of the safety plan.

15. On March 1, 2023, the superintendent sent an internal District email that stated, in part: Emergency Expulsion conversion to short term suspension was explained (Suspension was 4.5 days which ended yesterday (Monday) and puts us at a total of 9 for the year).

...

FBA was explained and consent asked. (Mom agreed). We also discussed doing a re-evaluation which mom is also open to. This will include sensory.

...

Student returns to school today.

...

Part of the re-engagement includes having an adult nearby [the Student] for the first two weeks. Purpose: Remind [the Student] of strategies, collect data, proximity in case of future incident.

16. On March 16, 2023, the District sent the Parent a consent for an FBA. The Parent signed it on March 26, 2023.

17. A progress report, dated March 17, 2023, provided that the Student was making sufficient progress on his IEP's social/emotional goal.

18. On March 27, 2023, a manifestation determination meeting was held. The team determined the act that resulted in the Student's suspension was a manifestation of the Student's disability. The March 24, 2023 suspension was shortened to one day.

19. On April 13, 2023, an FBA meeting was held. The evaluation report indicated the Student did not have a need in occupational therapy and an academic test was not able to be finished because the Student was not present for testing. The Student continued to be eligible for special education services under the emotional behavioral disability eligibility category.

20. On April 18, 2023, the IEP team agreed to develop and implement a BIP for the Student.

21. On April 20, 2023, the Student's IEP team met for its annual meeting. The Student's IEP provided SDI, to be provided by a paraeducator in a special education setting, as follows:

- Social/Emotional: 40 minutes/4 times weekly

The Student received 1,710 minutes per week of building instructional time, with 160 minutes served in the special education setting. The percent of time in a general education setting was 90.64%. The Student's LRE was 80–100%.

According to the District's response, which explained how the Student's IEPs were implemented, the 40 minutes of SDI was delivered by the special education teacher with collaboration from the counselor. Sometimes during the lessons, students would break out into smaller groups and work with paraeducators, the special education teacher, or the counselor, depending on needs of the group and the specific activity.

22. On April 20, 2023, the Parent sent the District the following email: "During [the Student's] IEP meeting on April 13, 2023, I expressed that I disagree with the Functional Behavior Assessment. I would like to request an Independent Educational Evaluation (IEE)."

23. On April 22, 2023, the Parent sent the District the following email:

What I do not agree with is the sensory portion of the FBA. I was, however, told that the sensory portion doesn't change whether [the Student] will qualify now or in the future for special education accommodations. If it has no effect on anything, I don't feel that it needs to be redone. If it will EVER be used to determine whether he qualifies or not, or as a basis as to whether he's progressing or not, then I want it done by an outside evaluator, because it is not accurate. As for the rest of the FBA, I do feel it accurately represents [the Student], however, there are some things I would like to add, such as [the Student's] sensory issues.

24. A PWN, dated April 24, 2023, stated, in part:

The team is proposing continuing services for [the Student] under the category of Emotional Behavioral Disability (EBD) with specialized direct instruction in social emotional. He will be attending [the District] twice a week for two hours from 8:00-10 am (Monday and Thursday) and receiving SDI 2 times a week.

...

[The Student's] family has decided to do partial enrollment in [District] for his social emotional services listed in his IEP and an additional study hall two times a week. The remainder of his day he will do homeschooling.

...

Team considered discontinuing [the Student's] IEP, but rejected that option. We also talked about continuing full day services for [the Student].

...

Without specially designed instruction the needs of the student cannot be met to progress towards his goals. [The Student's] family felt like this was not in his best interest to attend full days at the school.

...

This IEP is based off of [the Student's] most recent evaluation, parent input, observations, BIP, and FBA.

...

The district stands ready to serve [the Student] for a full day of school 5 days a week and his full special education minutes at 40 minutes 4 times a week for social emotional.

25. On April 25, 2023, the director of special education (director) emailed the Parent as follows:

The sensory profile was one data point, that was used as part of the evaluation the team initiated during the meeting on February 27. It provided information that helped the IEP team decided to provide sensory based accommodations for his current IEP. The overall evaluation concluded that he continues to qualify for special education support under the

category of Emotionally Behavior Disorder (EBD) and will continue receiving specially designed instruction in the area of social emotional skills.

...

With this information, are you still asking for an IEE or withdrawing the request.

26. On May 24, 2023, the Parent filed the present complaint, alleging in part, that since May 25, 2022: (1) The District did not have an FBA in place for the Student; and (2) the District had not appropriately implemented the Student's IEP.

Additionally, the complaint stated, "I would like for him [the Student] to continue home schooling through [private academy] through the remainder of middle school, and I would like [the District] to cover the cost of tuition."

27. On June 16, 2023, the District submitted a response. Regarding the first issue, the response stated:

An FBA was not created in [the out of state school district] by their special education team. ...In April of 2022 (during a triennial evaluation) the [District] education team also did not conduct an FBA at this time, because there was no evidence in his prior evaluation from the [out of state school district] that an FBA was discussed as an area of concern and the new evaluation continued to not identify a basis for an FBA. The [District's] team that worked with [the Student] in the 2021-2022 school year felt that his behavior had improved since the move from [the out of state school district]. However, [Student] was suspended for more than 10 days in the 2021 school year for similar behavior and there is no evidence that a manifestation determination meeting was held.

In February 2023, during an IEP amendment/re-entry meeting the IEP team suggested conducting an FBA to look closer at the antecedents that were leading to [Student's] behavior. [Student] was having fewer incidents than the 2022-2023 school year, but the severity and physicality had been increasing.

28. Regarding the second issue, the response stated:

The IEP services that were required to be served in May of 2021 were social emotional minutes in the general education setting (120 minutes a day), social emotional minutes in the special education setting (30 minutes 1 time a week), as well as mental health counseling (30 minutes 4 times a month). The district did not fully implement this IEP that was received from [the out of state school district]. Last year [the District] had an online school psychologist for the first time. The online school psychologist did not complete the transfer paperwork, and this contributed to issues with the IEP transfer process.

...

Notwithstanding the issues with the IEP transfer process, the [District] team should have met and implemented a new evaluation and IEP for the student in a timely manner as part of the transfer process.

In June of 2022 a new IEP was created for [the Student] after the April 2022 re-evaluation where social emotional was his only qualifying area. It should be noted that this IEP in June of 2022 was created later than the April due date for the 2021-2022 IEP. In February of 2023, the IEP team decided on re-opening [Student's] evaluation to see if [the Student] would qualify for occupational therapy (sensory) and update his academic testing that was

not previously looked at during the 2022 evaluation. At the February 2023 IEP amendment meeting it was also decided with the IEP team to increase the amount of time and change location of where he was receiving social emotional specially designed instruction.

...

The [local educational service district (ESD)] will provide training for the school psychologist, the special education secretary, counselor, school administration, and special education teachers regarding the transfer IEP and evaluation process. This training will be completed at the start of the 2023-2024 school year as new staff are onboarded.

Staff will review discipline protections for students, including those with special needs, prior to the start of the 2023-2024 school year. IEP teams will be monitoring the number of days of suspension and types of behaviors that led to suspension closely on each child. Training on this will also be provided by [ESD] for the school psychologist, special education secretary, special education teachers, and school administration at the start of the 2023-2024 school year.

CONCLUSIONS

Issue One: FBA – The Parent has alleged that since May 25, 2022, the District did not have an FBA in place for the Student.

Pre-SECC Investigation Time Period

According to the District, the Student's previous out-of-state district had not conducted an FBA prior to the Student entering the District on September 1, 2021. As this time period is beyond the one-year investigation time period, which began on May 25, 2022, OSPI will not reach a conclusion as to whether the District should have conducted an FBA when the Student began attending the District on September 1, 2021.

However, OSPI notes that during the 2021–22 school year, the Student had accumulated 12.5 days of suspension by May 2, 2022. The applicable regulations provide that when accumulated suspensions reach more than ten school days, a student's IEP team must hold a manifestation determination meeting and conduct an FBA or review the student's BIP to modify it as necessary. Again, as this occurred prior to the one-year investigation timeline, OSPI will not reach a conclusion as to whether the District should have conducted an FBA at this time. However, the District recognized that it failed to follow transfer procedures and failed to conduct a manifestation determination following May 2, 2022. The District proposed staff training in transfer IEPs and the evaluation process. As training will be ordered below, OSPI will add these District proposed topics to the required training.

Need for an FBA Post May 25, 2023

In developing, reviewing, and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address

that behavior. An FBA must be used proactively, if an IEP team determines that it would be appropriate for a child.

This leaves the question as to whether the District's decision to wait until February 23, 2023, to determine the need for and conduct an FBA⁴ was reasonable. Based on the present case's facts, the District should have conducted an FBA during the 2022–23 school year, before February 23, 2023.

By May 25, 2022, the District was on notice that the Student was struggling with his behavior, considering the 12.5 days he was suspended during the 2021–22 school year for acts that almost always involved either striking or throwing objects at staff and peers. As discussed above, while prior to the complaint investigation period, the District acknowledged that a manifestation determination was not held. If a manifestation determination had been held, the team should have considered whether an FBA was needed and it is likely that, had this occurred, obtaining consent and conducting an FBA would have happened during the time period at issue, after May 25, 2022. Further, within six weeks after the start of the 2022–23 school year, on October 11, 2022, the Student was suspended for acts that included throwing objects at staff—an apparent continuation of the Student's previous pattern of behavior. Based on the Student's history, it would have been reasonable for the District to conduct an FBA in October 2022—or at minimum, consider the need for an FBA—but it did not. Then three months later, on January 4, 2023, the Student was suspended again for bringing a knife to school. After this serious incident, and considering the Student's behavior history, the District should have immediately moved to conduct an FBA, but it was not until another seven weeks later, and one more suspension, that on February 23, 2023, the Student's team agreed to conduct an FBA.

Finally, while the Student did not accrue 10+ days of suspensions until March 24, 2023, the Parent stated that throughout the school year, she was called to pick the Student up early from school due to behaviors. According to the Parent, these days, along with the days the Student was suspended, resulted in the Student missing a significant amount of his education. These informal removals do not appear to be documented, so it is unclear how often this occurred. It is possible the Student was removed for more than 10 days prior to March 24, 2023, given these informal removals. Regardless, these informal removals support the conclusion that an FBA likely should have been initiated earlier in the 2022–23 school year. The District acknowledged this issue to some degree, proposing that staff would review discipline protections for students eligible for special education and conduct training, and that teams would be “monitoring the number of days of suspension and types of behaviors that led to suspension closely on each child.” Additionally, the District should understand that calling parents to pick up a student early from school, for any behavioral reason, is a form of discipline that must be officially reported.

⁴ On April 13, 2023, an FBA meeting was held to discuss the recently conducted FBA. On April 20, 2023, the Parent sent an email, stating that she did not agree with the FBA. Subsequently, the District sent her information about how to obtain an IEE.

Thus, based on the present case's facts, OSPI notes that an FBA should have been conducted earlier and finds a violation regarding the first issue. As a corrective action, OSPI will order the District to conduct training on FBAs and discipline protections.

Issue Two: IEP Implementation – The Parent has alleged that since May 25, 2022, the District has not appropriately implemented the Student's IEP.

If a student eligible for special education services transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student, including services comparable to those described in the student's IEP, until the new school district: (a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and (b) Develops and implements a new IEP.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

At the start of the 2021–22 school year, the Student's April 27, 2021 IEP was in effect. Regarding the second issue, the District's response stated:

The IEP services that were required to be served in May of 2021 were social emotional minutes in the general education setting (120 minutes a day), social emotional minutes in the special education setting (30 minutes 1 time a week), as well as mental health counseling (30 minutes 4 times a month). The district did not fully implement this IEP that was received from [the out of state school district].

...

Notwithstanding the issues with the IEP transfer process, the [District] team should have met and implemented a new evaluation and IEP for the student in a timely manner as part of the transfer process.

This IEP expired in April 2022, and thus, from April until June 10, 2022, the District had no IEP in place for the Student, nor does it appear the District provided comparable services as the District stated it "did not fully implement this IEP that was received from [the out of state school district]." This means that based on the one-year timeline for the present case, the Student's IEP was not implemented from May 25 until June 10, 2022, and OSPI finds this to be a violation. As discussed below, the District will be required to provide the Student compensatory education.

As for the Student's IEPs from June 10, 2022 through May 24, 2023, the Student's IEPs have been implemented properly. According to the District's response, from the fall 2022 until February 27, 2023, the Student's social/emotional SDI consisted of check-ins with his general education teacher. Those check-ins occurred five times a week (Monday–Wednesday, 10-minute check-in each day; Thursday–Friday, 15-minute check-in each day). The Student also received additional 1:1 services from the school counselor. Although this delivery of SDI was not provided exactly as

the Student's June 10, 2022 IEP called for, the District did not materially fail to implement the Student's services.

On February 27, 2023, the Student's IEP team amended his IEP, and from February 28, 2023 through the point when this complaint was filed, the Student was entitled to social/emotional SDI for 40 minutes/4 times a week, provided by a paraeducator. According to the District's response, the 40 minutes were delivered by the special education teacher with collaboration from the counselor. Once again, although this delivery of SDI was not provided exactly as the Student's February 27, 2023 and April 20, 2023 IEPs called for, the District did not materially fail to implement the Student's services.

Based on the violation for the second issue, compensatory education will be awarded to the Student using the Student's April 27, 2021 out-of-state IEP. The Student will be entitled to compensatory education as follows:

- Specialized Academic Instruction: 810 minutes (general education)
- Individual Counseling: 60 minutes (special education)
- Mental health counseling: 60 minutes

In acknowledgement of the violation, the District proposed staff training regarding IEP transfers and evaluations. OSPI accepts the District's proposal.

CORRECTIVE ACTIONS

By or before **July 28, 2023, August 11, 2023, September 29, 2023** and **January 26, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **September 15, 2023**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Specialized Academic Instruction: 810 minutes
- Individual Counseling: 60 minutes (special education)
- Mental health counseling: 60 minutes

Additionally, OSPI notes that "specialized academic instruction" is the term used in the Student's transfer IEP and not a term typically used in Washington. During this meeting, the parties will need to determine how to best implement the 810 minutes of academic instruction and can choose the specific areas of instruction based on the Student's needs.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **September 29, 2023**.

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. By or before **January 12, 2024**, the compensatory education must be completed. By or before **January 26, 2024**, the District will provide documentation to OSPI that it has completed the corrective actions.

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 **January 26, 2024**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer) will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-72.

The training will be provided to school psychologist, the special education secretary, counselor, school administration, and special education teachers. The training will include the following training topics:

- Transfer IEPs and transfer procedures.
- Evaluation processes.
- Special education discipline processes and manifestation determinations, including best practices around tracking formal discipline, classroom removals, exclusions, and that calling parents to pick up a student early from school, for any behavioral reason, is a form of discipline that must be officially reported.
- FBAs, including best practices for determining when to conduct an FBA.

By or before **July 28, 2023**, the District will notify OSPI of the name of the trainers and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By or before **August 11, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 18, 2023.

By **September 22, 2023**, the District will conduct the trainings regarding the topics raised in this complaint decision.

By **September 29, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this 17th day of July, 2023

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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