

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-77

PROCEDURAL HISTORY

On May 30, 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 South Kitsap 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 30, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 1, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 5, 2023, the Parent provided additional information and OSPI forwarded that to the District the same day.

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

On July 3, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District 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 27, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow proper procedures for ensuring the Parent's participation in individualized education program (IEP) development in spring 2023, including:
 - A. Informing the Parent of meeting times and ensuring the Parent's participation in the same;
 - B. Considering the Parent's input on IEP team decisions;
 - C. Ensuring IEP team decisions related to social/emotional/behavior services were based on sufficient, relevant data on the Student's needs resulting from the Student's disability; and,
 - D. Ensuring the Student's annual IEP was updated in a timely fashion?
2. Did the District follow proper IEP implementation procedures on May 18, 2023?

LEGAL STANDARDS

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Questions 5 and 9).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to IDEA's goal of protecting the rights of students with disabilities and providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP, the Supreme Court and the

9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

IEP Development for a Student with Behavioral Needs: 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. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes their 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. 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).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

Background: 2021–22 School Year

1. During the 2021–22 school year, the Student was enrolled in another district. The Student attended school on a part-time basis for 30–40 minutes, four days per week, to receive occupational therapy (OT), speech services, and social interaction with peers. The remainder of his day, the Student was taught at home by the Parent, but the Student was not enrolled in any homeschool program.

2. On April 25, 2022, the Student's IEP team in the prior district developed a new annual IEP for the Student to be implemented on April 26, 2022. The IEP was developed for a full school day and included annual goals in the areas of adaptive/life skills, communication, math, reading, social/behavior, and written language. The IEP provided the following related services in a special education setting: (a) 30 minutes per month of speech language pathology with a speech language pathologist (SLP), and (b) 90 minutes per month of OT. The IEP provided for the following special education services (SDI) to be provided by a special education staff person in a special education setting:
 - Adaptive/life skills: 50 minutes per week
 - Math: 150 minutes per week
 - Reading: 150 minutes per week
 - Written language: 150 minutes per week

The IEP also called for the following additional special education services:

- Social/Behavior to be provided by special education staff: 150 minutes per week in a general education and 875 minutes per week in a special education setting
 - Communication: 90 minutes per month by an SLP in a special education setting
3. On August 25, 2022, the Parent and the principal at the District's elementary school spoke about the Student's enrollment in the District. The Parent explained to the principal that, like in his prior district, the Student would attend the District elementary school only to receive OT, speech services, and specialist classes (P.E., music, art), and she would teach him at home the remainder of the school day.

2022–23 School Year

4. The District's 2022–23 school year began on September 7, 2023.
5. At the start of the 2022–23 school year, the Student was in the third grade and was enrolled at a District elementary school. The Student was eligible for special education services under the category of autism. The April 2022 IEP from the prior District was in effect. The District assigned a special education teacher to serve as the Student's case manager.
6. The elementary school's class times ran from 9:05 am to 3:40 pm on Monday, Tuesday, Thursday and Friday, and from 9:50 am to 3:40 pm on Wednesdays.
7. On September 14, 2022, the District issued the Parent prior written notice (PWN) that it was fully accepting the prior district's 2021 evaluation of the Student and the April 2022 IEP, and the Student would receive the services outlined in the April 2022 IEP. Although the District was aware the Student would only attend school part-time, the PWN did not address that issue by stating that the District stood ready to implement the full IEP, nor did it explain what and how IEP services would be provided given the Student's part-time enrollment.
8. There is no dispute that the Parent chose to have the Student attend school only part-time to receive speech and OT services, and to start the day with third grade classmates and then attend classes only with specialists (P.E., music, art). Specifically, the Student joined his third grade classroom and then attended specialist classes from 9:05 to 9:50 am on Monday,

Tuesday, Thursday, and Friday. On Mondays and Fridays, he also attended speech and OT services from 9:50 to 10:20 am. On Wednesday, specialist class was held from 11:20 am to 12:00 pm. The Student did not access any of the social/behavior, adaptive/life skills, math, reading, or written language special education services in the Student's April 2022 IEP.

9. On November 1, 2022, the District proposed an assessment revision in the area of motor skills to obtain additional information regarding the Student's OT needs. The Parent provided consent for the assessment revision that day.
10. Due to scheduling conflicts, the IEP team was not able to meet together and on November 17, 2022, a District occupational therapist met with the Parent met to review the results of the assessment revision.
11. On November 18, 2022, with the Parent's consent, the occupational therapist met with the remaining team members, discussed the results and service options, and the IEP team amended the Student's IEP and removed OT from his special education services, and instead, added 60 minutes per month of OT consultation as a supplementary aid and service. The other special education services remained unchanged. The Parent signed the IEP amendment and received prior written notice of the IEP decision, which took effect on November 18, 2022.
12. Due to this change, the Student's schedule, beginning on November 18, 2022, was as follows:
 - Mondays: The student attended school for up to 75 minutes per day: 9:05 to 9:10 am third grade classroom, 9:10 to 9:50 am specialist class, and then 30 minutes of special education speech services from 9:50 to 10:20 am.
 - Tuesdays, Thursday, and Friday: The Student attended school for up to 45 minutes per day: 9:05 to 9:10 am third grade classroom and 9:10 to 9:50 am specialists' classes.
 - Wednesday: The Student attended school for up to 45 minutes per day: 11:20 am to 12:00 pm specialist class.
13. The same day, November 18, 2023, the occupational therapist for the Student's school notified the Student's case manager that the Student's Parent wanted to talk to them about making a plan for supporting the Student at school more and liked the idea of a social skills group.

The same day, the Parent also emailed the case manager with the subject, "Re: [Student]'s schedule updates?" The Parent said that the occupational therapist had referred to the case manager, organizing a social time for kids after 9:50 on Fridays, and that the therapist would be at the school during that session until 10:20. The Parent also said:

I am all for having [Student] attend longer sessions of the school day, providing there is an appropriate place for him to attend. He could definitely benefit from more immersion in social interactions and even with school projects or learning activities. Especially if he has consult [occupational therapist] there to help him with his sensory struggles.

14. On November 18, 2022, later that same afternoon, the case manager replied to the Parent:

I will need to connect with our homeschool liaison regarding a lot of these points. I'm not really sure how the district handles these situations. Let me get back to you as soon as I can get a bit more information...I know there are a few home school programs, and some

organize in-person events and trips for the students to socialize and get together. I believe there won't be any trouble getting specialists times and special services while homeschooled, but I'm not 100% sure how that looks.

15. The Parent replied to the case manager on the evening of November 18, 2022, "I am totally ok with you discussing the questions with who ever can help." The Parent continued, "We are not opposed to him trying more time in the classroom, especially if you see opportunities to help him develop. I just want him to have the opportunities in a way that will make him successful!" The Parent also indicated that they had joined homeschool groups over the summer and enjoyed them.
16. On November 29, 2022, the Parent wrote to the occupational therapist:

I know this is just for OT, but with [Student]'s other goals - do you know if we will have another team IEP review to go over the progress of those? Perhaps at the end of the year? I'm curious what to expect especially considering that there are required minutes of supports in excess of what he is currently receiving and I'm curious how the team will handle those.
17. On December 2, 2022, the case manager provided the Parent with information about a District online program that provides most classes online with work completed at home using curriculum provided by the District.¹ The case manager encouraged the Parent to contact the principal of that program and said, "or we can try to meet together if you'd like."
18. On January 9, 2023, the Parent notified the case manager that she had applied for the Student to attend the District's online program. The case manager replied that he had heard from the school as well, and the program wanted to set up a meeting to discuss the Student's enrollment.
19. The Parent asserted that the online program staff met "with the Student's IEP team" on February 16, 2023, to discuss the Student's enrollment. And during that meeting, a request was made to update the Student's IEP, but that did not timely occur, and the Parent did not receive any draft IEP for consideration until April 20, 2023.
20. On April 20, 2023, the special education teacher/case manager sent the Parent a draft annual IEP and related documents to review. In all, the document was 19 pages and the first page erroneously stated it had been sent to participants on April 18, 2023. The document included the document "Review Individualized Education Program (IEP) Invitation" that noted "an IEP meeting has been scheduled for April 24, 2023, at 8:00 a.m."

¹ The online program is an alternative, choice school within the District that provides families with students from kindergarten through 12th grade the opportunity to take a variety of classes from a fully accredited public school. Students are required to meet weekly with their consulting teacher to discuss and monitor academic progress. The consulting teacher is also available to assist the student with study skills and may provide workspace, if warranted. Parents are also required to attend monthly meetings with their student and teacher to monitor academic progress. The program utilizes an online curriculum that includes textbooks and workbooks. Elementary students participate in a variety of on-campus learning opportunities.

The case manager explained that it was a draft, but to let him know if the Parent had any questions, wanted to meet with the full IEP team, or if she approved the draft. The case manager said that if the Parent wanted to meet, he would arrange an IEP meeting after his jury duty finished the following week.

The draft included information under present levels of educational performance and measurable annual goals in the following areas: math, adaptive, communication, reading, writing. The draft IEP, which was dated April 24, 2023, identified 12 accommodations, and provided for the following related and special education services:

- Communication: 30 minutes per month of communication related services provided by an SLP in a special education setting and 90 minutes of SDI per month provided by an SLP in a special education location.
- Social/Behavioral SDI: 250 minutes per week in a general education and 900 minutes per week in a special education location to be provided by special education staff.
- SDI in each of the following areas to be provided for 150 minutes per week by a special education teacher in a special education setting: adaptive, math, reading, written expression.

It also included a supplementary aid and services of an OT consultant for 30 minutes a month in a special education setting. In all, the IEP provided for 1,665 minutes per week of building instructional time, 1,380 minutes per week in a special education setting, and 17.12% of time in a general education setting.

The "Description of Services" in the IEP stated:

[Student] currently participates in the general education setting on campus for approximately 50 minutes per day for specialists, and for 30 minutes of communication services. When not on campus, [Student] participates in remote learning through the [online program] at his academic level based on his present levels of performance and IEP goals, and receives homeschool support from his parents. Were [Student] to return to a fully on-site learning model, he will receive the above planned service matrix in a pull out model.

21. On April 23, 2023, the Parent provided her feedback on the April 20, 2023 IEP draft, but did not specifically request a meeting with the full IEP team, nor did she state whether she would attend the April 24, 2023 meeting.
22. On April 24, 2023, the case manager replied to the Parent and said he would incorporate the Parent's changes and stated, "If you would like to meet to go over anything just let me know." The case manager also incorporated the Parent's feedback into the draft IEP that was shared with other team members.
23. It is the Parent's position that there was an IEP team meeting on April 24, 2023, which the Parents had not been invited to attend. The Parent also asserted that they did not grant permission for the meeting to be held without them, despite the existence of a "contact attempt report" that stated the Parent gave such permission. In support of this position, the Parent provided another draft IEP, dated April 24, 2023. The Parent said that this "IEP draft" was discovered during the inquiry into an incident that occurred on May 1, 2023. The Parent

alleged that an IEP, dated April 24, 2023, had “accommodations” that were inappropriate for the Student. Specifically, the Parent said the IEP had accommodations that “included remedies for being put into a vest, and firm hugs given, however the child is extremely averse to touch.” The Parent also raised concerns that it had “accommodations” for:

- Assistance with dressing for a child who does not require assistance with coats or shoes;
- Use of a sound/gong/chime for the child to learn to respond to his name when he has no auditory deficiencies, and has above average receptive language skills; and,
- “Hard work” in the classroom for a student that regulates through sensory toys (clay, putty, etc.) or a cushioned area or swing to rest.

24. This draft IEP provided for the same level of related services, SDI, and supplementary aid and services as the draft provided to the Parent, but it differed from the April 20, 2023 draft IEP provided to the Parent via email in several ways:

- It was 20 pages, not 19 pages.
- The invitation stated that it had been sent to participants on April 20, 2023.
- The contact page, rather than noting a phone call on April 19, 2023, noted an email of April 20, 2023, with a response date of April 24, 2023. Under response, it said, “Can’t attend – Permission to hold meeting.”
- The IEP included staff signatures and noted that the Parent “Did not attend meeting.”
- The IEP had additional present levels and annual goals related to “Motor [Skills].”
- The alleged “accommodations” the Parent asserted were inappropriate were included in that area of the IEP documentation and stated, “He does not demonstrate a need for [SDI] in fine motor skills at this time. Occupational Therapy is recommended as a consult to help [Student’s] teachers set up his environment to meet his sensory needs allowing his brain to focus on more desired tasks in the school curriculum. The most effective service model to meet [Student’s] needs are expected to be consultation with [Student’s] teacher on supports and strategies to support [Student’s] participation, self-regulation, and expand his participation with his peers.”
- The present levels then included sensory recommendations related to the vest, sounds, and “hard work” in the classroom, which the Parent asserted were inappropriate.

25. The Parent alleged that the case manager moved to implement the April 24, 2023 IEP draft, which differed significantly from the April 20, 2023 draft shared with the Parent.

26. Between April 20 and 26, 2023, the District’s SLP emailed a District staff person who works on records and compliance and the case manager questions and comments about “speech language pathology” listed as SDI and “communication” listed as a related service. On April 26, 2023, the SLP emailed the case manager and said she had “signed” for the Student ,and after some email exchange and agreement to put “communication” as both SDI and a related service, the case manager replied to the same day, “Sounds good. I’ll go get some more signatures and call it good.”

27. According to the Parent, physical manual restraints were used during a “meltdown” on May 1, 2023, and the Student was injured. The Parent stated the Student was placed alone in a dark, windowless room. The Parent also asserted that, per staff statements, the child had shown self-injurious behavior during the struggle yet was placed in a dark room and at a point, left unsupervised, with no consideration to his safety.

28. The Parent said that because of the May 1, 2023 incident, until May 18, 2023, the Parent either kept the Student out of school for his safety or directly observed and supervised the Student at school until the IEP was finalized and implemented.
29. On May 2, 2023, the Parent requested an IEP meeting and notified the District that, in the interim, she would be keeping the Student home until they can develop a safe plan for him to be at school.
30. On May 8, 2023, the SLP that served the Student emailed an instructional specialist for special education in the District. The SLP said she had called the Parent to try to reschedule his speech time for the upcoming Friday as the Student had been dysregulated and the Parent ended up taking him home. The SLP said the Parent had asked her about a meeting and she told her the District was working on getting it scheduled. The SLP continued:
- We previously met as a team and discussed new goals and things like that but I didn't know that [the Parent] had wanted some corrections/adjustments to be made to the IEP and had emailed [the case manager] about it. We did not discuss any possible corrections or adjustments at this meeting.
- [Parent] told me that she had received the draft of the IEP but an updated copy was never provided to her. Just wanted to share that with you as it sounds like we could just amend/make adjustments to the IEP that was written on the 25th.
31. On May 11, 2023, the Student's IEP team, including the Student's Parent, met to discuss his educational needs, review his progress, and update his IEP. The team reviewed the Student's present levels of educational performance and goals in the areas of math, social/behavior, adaptive, communication, reading, and written expression. The IEP team also made additional revisions to the draft IEP based on the Parent's input, and discussed a plan for supporting the Student if he became overwhelmed and needed a break. Specifically, the May 2023 IEP document stated under "Team Considerations" a consideration for a behavior plan. And, under the present levels, for social/behavioral, it stated, "Goal Baseline: Current data suggests that [Student] uses his safe space to calm and manage his reaction to an average of 0 out of 5 perceived stressful events (new skill/strategy)."

The behavior plan laid out a detailed "Safe Base Plan" for the Student. The "safe base" was to be where the Student's coat and backpack were stored and was to be accessible to the Student in each educational environment. In new environments, a "safe base" was to be established immediately, the Student was to be told and shown its location, and he have access to his backpack and coat so he could go to them to deescalate for up to 10 minutes. A few things that may trigger the Student to escalate and require a break in "safe base" are people touching his body or clothing, some fabrics and materials, others not following expectations/rules, and changes in routine/staffing. The plan also stated that when the Student is at "safe base" trying to deescalate:

[T]here is to be limited to no communication with [Student] and no touching of his body. ... [Student] is incredibly sensitive to touch and may escalate even further with physical touch. If [Student] says 'Leave me alone' leave him be so that he can de-escalate. This may

take up to 10 minutes. Staff must continue to monitor/supervise him with no verbal communication or touch.

32. The IEP was not completed at the end of the May 11, 2023 IEP meeting, as it was still in draft form and new input needed to be added. The District asked to have until the following week to complete it and the Parent agreed. The final IEP was provided to the Parent on approximately May 17, 2023, and the written IEP that resulted from the May 11, 2023 IEP team meeting, included the behavior plan discussed above and the following SDI:

- Communication: 120 minutes monthly with an SLP in the special education setting.²
- Social/behavioral: 900 minutes weekly with in special education setting and 250 minutes in general education setting both with a special education teacher.
- SDI in each of the following areas to be provided for 150 minutes per week by a special education teacher in a special education setting: adaptive, math, reading, written expression.

The IEP also provided for 30 minutes per month of OT consultation by an occupational therapist as a supplementary aid and service. In all, the IEP provided for 1,665 minutes per week of building instructional time, 1,380 minutes per week in a special education setting, and 17.12% of time in a general education setting.

33. The Parent alleged the District failed to implement the Student's IEP on May 18, 2023, during a behavioral incident that occurred in PE.

34. A paraeducator who was present during the May 18, 2023 behavioral incident provided a statement, which was provided to the Parent by the principal the same day. The statement indicated the Student's PE class started in a gym and then went to a field outside. The Student was told that his "safe base" while at the field was behind a backstop as it was a private space and his water bottle was put there. After playing appropriately for a few minutes, the Student began slamming his golf club into the ground and was reminded to be safe. The Student then ran to the chain link fence surrounding the field, the paraeducator approached him, and from two feet away, reminded him again of expectations and that when he was able to follow them to "jump back into golf." The Student escalated and began hitting the metal fence with the club. Because the golf club was coming near the paraeducator's head, the paraeducator put her hand on the end of the club to hold it still. The Student escalated further and tried, unsuccessfully, to swing the club at the paraeducator's head. The Student was told several times he needed to be safe, to let go of the club, and that he had a "safe base" to go to.

The Student let go of the club, but went back and sat near his initial golf spot near other students who were still golfing, rather than his "safe base." According to the paraeducator's statement, whenever she issued redirections or reminders of safety, the Student yelled "leave me alone" and other statements. The paraeducator asked him to go to his "safe base" so that he would not be in danger of being hit by another golfing student. The Student refused, so the paraeducator asked the teacher to remind the Student to move to his "safe base." The

² This IEP differed from the April 24, 2023 IEP, in that it did not include 30 minutes of SLP related services and 90 minutes of special education services and instead combined them to 120 minutes of special education services in communication to be provided by a SLP.

Student refused again but moved to another location about seven feet away from the line of golfers. About 10 minutes later, he went back to his initial space and began throwing golf balls at the paraeducator and threw dirt and grass in the direction of another student near him. The paraeducator reminded him not to throw things and the Student then ran to a "rainbow parachute," climbed under it, and was asked to come out as that was not his designated "safe base." The Student came out as the class was lining up to leave. He went and got his water bottle at his "safe base" and got in line, but then left, ran to the playground, and climbed on a "stone" wall near a preschooler who was using a slide. He was told "Do not touch..." and was reminded the playground was not for his use at that time. He slid down the slide and rejoined the class.

35. When the school principal emailed the Parent the paraeducator's account on May 18, 2023, he said he wanted to speak with the Student the next time he is at school. The principal said the goal of the conversation would be to (1) reinforce the expectation that he uses his "safe base" when needed, and (2) let him know the consequence for the behavior. The principal said he believed a natural consequence would be to not allow the Student use of PE tools for two sessions (one week) and the Student would be provided an alternative PE task without use of tools. The principal did not suggest any other consequences for the Student.

Complaint and District Response

36. Regarding the allegation that the District failed to follow proper procedures for ensuring the Parent's participation in IEP development, the District denied that it violated the IDEA and denied the Student a free appropriate public education (FAPE). The District denied it failed to ensure the Parent's participation in the IEP meeting and failed to consider the Parent's input.
37. Regarding the allegation regarding informing the Parent of meeting times to ensure the Parent's participation, the District acknowledged that it did not ensure that the Parent attended an IEP meeting to review the April 2023 draft IEP. But the District said the case manager had requested the Parent's feedback and offered to schedule a meeting if the Parent wanted one, and the full IEP team met on May 11, 2023. Following that meeting, the IEP team finalized the Student's annual IEP. The District proposed that, if OSPI finds that corrective action is warranted, it provides written guidance regarding parent participation in IEP team meetings to the members of the Student's IEP team at the District school during the 2022-23 school year.
38. Regarding the allegation that the IEP was not timely updated, the District acknowledged that the Student's IEP team was required to develop a new annual IEP by April 25, 2023, and the Student's IEP team did not finalize his annual IEP until on or about May 17, 2023, which was approximately three weeks after the deadline for the annual review. But the District noted that it sent an initial draft of the Student's annual IEP to the Parent on April 20, 2023, requested the Parent's feedback, and that the Student's IEP team, including the Parent, met on May 11, 2023. It is the District's position that the delay was caused, in part, by the need to ensure input from all IEP team members. The District denied that this procedural violation impeded the Student's right to a FAPE; significantly impeded the Parent's opportunity to participate in the

decision-making process regarding the provision of a FAPE to the Student; or caused a deprivation of educational benefit. The District also noted that, during the three weeks in question, April 25 to May 17, 2023, the Student was only attending school for approximately 50 minutes per day for time with his classmates and specialists and 30 minutes per week for speech services. The District, therefore, denied that the procedural violation resulted in a substantive denial of a FAPE. However, the District proposed that, if OSPI finds that corrective action is warranted, it provides written guidance regarding timelines associated with IEPs to members of the Student's IEP team at the District school during the 2022–23 school year.

39. The District also "denies that it failed to ensure that decisions related to social/emotional/behavior services were based on sufficient and relevant data regarding Student's disability-related needs" because the "Parent chose for Student not to receive any of the social/behavior or adaptive SDI in his IEP." As a result, the District was unable to collect data on the Student's progress on his goals in those areas. Additionally, the Student only attended school for approximately 50 minutes per day for specialists, and 30 minutes per week for speech services, and this "very limited schedule impacted the District's ability to obtain data regarding his needs at school." The District stated that in developing the May 17, 2023 IEP, "the IEP team considered, among other things, Student's evaluation, IEP team meeting discussions, Parent's input, [SLP] and Occupational Therapist report and information, and current progress reported from Parent and Student's teacher."
40. The District denied that it failed to follow proper IEP implementation procedures on May 18, 2023. The District asserted that, although the Student was informed of where his "safe place" was multiple times and he was asked to go there, the Student refused to do so. The District also argued alternatively that even if staff did not follow the "safe base plan," the District staff's actions during the one incident did not constitute a material failure to implement the Student's IEP or to deny him FAPE. The District also noted that the Parent did not allege that any special education services outlined in his IEP were not provided to the Student on May 18, 2023.

Complaint and Parent Reply

41. The Parent did not dispute that they were provided a draft IEP on April 20, 2023, and that the Student attended school part-time, but disagreed with the District's position in other respects. It is the Parent's position that in November 2022, when OT services were removed from the Student's IEP, she asked about the Student's behavioral services but she received no response. The Parent also asserted that during a February 16, 2023 meeting about the Student's potential enrollment in the District's online program, a request was made for an IEP team meeting, but none was scheduled to consider the Student's services in that setting. The Parent's asserted that District staff met on April 24, 2023, and further discussed an IEP draft further via emails between April 24 and 26, 2023. The Parent asserted that the draft IEP that District staff discussed had different criteria and "accommodations" than the April 20, 2023 draft shared with the Parent, and proceeded to move forward without the Parent based on erroneous information that the Parent consented to the District drafting an IEP without the Parent's participation. It is the Parent's contention that, had the Parent known about the discussions and emails, the Parent would have participated, objected to the information in the

April 24, 2023 draft IEP, and an IEP could have been timely completed. More critically, the Parent asserted that, had an IEP timely been developed, the Student would not have been held out of school or accompanied by the Parent between May 1 and 18, 2023, "while the inaccurate IEP was available for reference."

42. The Parent asserted that during the May 18, 2023 incident, the Student went to his "safe space" to deescalate and was supposed to be left alone with minimal interactions for 10 minutes. The Parent alleged the paraeducator, "instead, kept talking and interacting with Student and even called for another staff member to talk to Student." The Parent alleged that this constituted a failure to implement the Student's IEP.

CONCLUSIONS

Issue 1: IEP Development – The Parent alleged the District failed to follow proper procedures for ensuring the Parent's participation in the development of the Student's IEP in spring 2023, including: (a) Informing the Parent of meeting times and ensuring participation, (b) considering the Parent's input on team decisions, (c) ensuring IEP decisions during IEP team decisions related to social/emotional/behavior services were based on sufficient, relevant data on the Student's needs resulting from the Student's disability, and (d) ensuring the Student's annual IEP was updated in a timely fashion.

Issue 1(a) and 1(b): When developing each child's IEP, the IEP team must consider, among other things, the concerns of the parents for enhancing the education of their child and the academic, developmental, and functional needs of the child. Additionally, the parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. Parental participation in the IEP and educational placement process is central to IDEA's goal of protecting the rights of students with disabilities and providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if the public agency is unable to convince the parents they should attend.

Here, the District provided the Parent with a PWN on September 14, 2023, indicating that it adopted the prior district's evaluation and IEP. Although the District was aware the Parent intended for the Student to only attend school part-time for specialist classes, OT and PT, the District's initial PWN did not address that issue, and there is no evidence the District convened an IEP meeting to discuss with the Parent which of the Student's IEP services, other than OT and PT, would be implemented given the Student's part-time schedule.

In November 2022, due to scheduling conflicts, the Parent met with the occupational therapist and then the therapist met with other IEP team members, and the Student's IEP was amended on November 18, 2022, to remove 30 minutes of weekly OT from the Student's IEP. Both the case manager and the occupational therapist were aware that the Parent had questions about whether the Student could receive behavioral services or "social skills" during the 30 minutes when he was no longer attending OT. But rather than convening an IEP team to consider that issue, the Parent was referred to the District's homeschool or online learning program.

In February 2023, when there were questions about how the Student's IEP could be implemented in the online/homeschool setting, the District did not convene an IEP team meeting to consider that issue. Instead, the District waited until just before the annual IEP deadline to send the Parent a draft IEP for consideration on April 20, 2023. The draft IEP contained a PWN that indicated a meeting would be held on April 24, 2023, but the case manager's accompanying email undercut that message and stated an IEP meeting would have to be held later due to his jury duty. The Parent provided feedback to the April 20, 2023 draft she was provided, but the case manager did not follow up about whether the Parent wanted to participate in an IEP meeting.

OSPI also finds that District staff had meetings and email discussions about the Student's IEP April 20 and 26, 2023, that did not include the Parent. Further, on April 24, 2023, a draft IEP was developed that differed from the one the Parent was provided. The evidence indicates that at least one staff person, the SLP, believed that the IEP that the case manager shared with her had been finalized and was being implemented; thus, a subsequent meeting with the Parent would "amend" the April 24, 2023 IEP. But the Parent was not timely provided with a copy of the April 24, 2023 draft IEP, nor is there evidence that she was ever issued a PWN about that IEP.

Considering all the above, OSPI concludes that the District failed to properly ensure the Parent's participation in IEP meetings and failed to consider the Parent's input as required. OSPI finds a violation. The District proposed correction action to remedy noncompliance, including providing written guidance regarding parent participation in IEP team meetings to school staff. OSPI finds the District's proposed corrective actions are appropriate, but that the guidance needs to be provided more broadly to include others in the District, including staff at the District's alternative program.

Issue 1(c) and 1(d): OSPI finds that the District did, finally, convene an IEP team meeting that included the Parent on May 11, 2023, and a new annual IEP was developed and finalized for the Student on or around May 17, 2023.

OSPI finds that although new data was limited due to the limited time the Student spent in District programs, the IEP decisions related to the Student's social/emotional/behavioral services were nonetheless based on sufficient, relevant data.

The District conceded that the IEP developed on May 17, 2023 was approximately three weeks after the deadline for the annual review, but argued that the procedural violation was not a substantive violation of FAPE. While delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive a student of any educational benefit, in this case, the delay did have an impact on the Student. First, the Student had begun a new school program within the District and there had been questions since February 2023 about how the IEP was to be implemented in that setting. Second, the Parent alleged that the Student had social/emotional and behavior needs during his part-time school day in specialist classes and that issue was not addressed until the May 17, 2023 IEP was finalized and implemented. Thus, OSPI finds a violation as the IEP was not timely developed.

In the event OSPI found noncompliance, as it has, the District proposed corrective action of providing written guidance regarding timelines associated with IEPs to members of the Student's IEP team at the District school during the 2022–23 school year. OSPI finds the District's proposed corrective actions are appropriate, but concludes that additional guidance is needed for all District staff, including staff at the District's alternative school. The guidance should address situations when IEP team meetings may need to be convened prior to the annual timeline for review. Additionally, the Student's IEP team will be required to meet to discuss the Student's part time schedule and how special education services will be implemented.

Issue 2: IEP Implementation – The Parent alleged the District failed to implement the Student's IEP on May 18, 2023. A district is required to implement special education services in conformity with a student's IEP.

The evidence about the May 18, 2023 incident indicates that the Student was informed of where his "safe place" was and he was asked multiple times to go there, but he refused to do so. Although the Student said "leave me alone" several times, he was not at his "safe base" when he made that request and was behaving in a way that could endanger himself or others. OSPI concludes that the District followed proper IEP implementation procedures on May 18, 2023, and that there was no material failure to implement the IEP. Thus, OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **August 25, 2023, September 6, 2023, and September 29, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 1, 2023**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team must address the following topics:

1. What special education services and supports the Student will receive at the District elementary school.
2. What special education services and supports the Student will receive at the District's online alternative school.

By or before **September 6, 2023**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

DISTRICT SPECIFIC:

Written Guidance

By **September 22, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant

principal, and special education certified staff at the schools that the Student was enrolled in during the 2022–23 school year, including the alternative school/online program. The guidance will cover the following topics:

- Providing adequate notice to parents of IEP team meetings.
- Ensuring parent participation in IEP team meetings, the rare circumstances when it may be appropriate to proceed without Parent participation, and how to document proceeding without parental participation.
- Timely convening annual IEP team meetings.
- Instances when an IEP team may need to be convened prior to the annual IEP meeting.

By **August 25, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 8, 2023.

By **September 29, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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.

RECOMMENDATIONS

OSPI recommends the District adopt best practices for issuing PWN for students receiving special education services who are partially enrolled or homeschooled. Such practices include notifying the parent: (1) which of the student’s special education services, if any, will be implemented in the alternate schedule or online or homeschool settings the Student is actually utilizing, and (2) the District stands ready to implement the full IEP should the Parent opt to enroll the Student in a full-day school program.

OSPI also recommends the District conduct training on PWN, using the training module on “Prior Written Notice the Special Education Process”. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>.

Dated this 25th 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.)