

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-46**

### **PROCEDURAL HISTORY**

On March 30, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Olympia School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), in its education of the Student.

On March 31, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 17, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on April 18, 2023. OSPI invited the Parent to reply.<sup>1</sup>

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

### **ISSUES**

1. Did the District implement the special education services, including the behavioral intervention plan (BIP), in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03105 from January 2023 through March 2023?
2. Did the District provide the Parent with an opportunity to provide input into the behavior services provided in the Student's IEP in the January 2023 meeting according to WAC 392-172A-03110?

### **LEGAL STANDARDS**

IEP Development: The Washington state legal requirements for an IEP can be found in WAC 392-172A-01100; WAC 392-172A-03090 through WAC 392-172A-03115. 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.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in

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<sup>1</sup> Clerical error: OSPI's letter to the Parent indicated that the District's response was received on March 30, 2023. This was incorrect, documents were received on April 17, 2023, as required.

making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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. 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 (9<sup>th</sup> Cir. 2007).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Parents must be part of the groups that determine what additional

data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §300.304, 300.306(1), 300.501; WAC 392-172A-03020(2), WAC 392-172A-03040, WAC 392-172A-05000(3)(c). IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b). Parents must be regularly informed, as specified in their child's IEP, of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve their IEP goals. 34 CFR §300.320; WAC 392-172A-03090.

## **FINDINGS OF FACT**

### **2022–2023 School Year**

1. The Student is eligible for special education services under the category of specific learning disability (SLD) and the Student's annual IEP meeting was held January 20, 2023. The Parent was notified of the meeting on January 12, 2023, and agreed to the meeting that same day.
2. The Student's previous IEP was in effect from January 25, 2022 through January 24, 2023, and included a BIP and accommodations allowing the Student to take frequent breaks.
3. On January 11, 2023, a school administrator sent an email to 'content area' special education staff, requesting a meeting that day to discuss compliance with referrals, BIPs, amendments, and data tracking for some students. The message indicated there may be a need to develop a refresher on IEP/504 protocols and documentation.
4. Later, on January 11, 2023, following the meeting scheduled by the school administrator, a special education staff member emailed three colleagues regarding the outcome of this meeting. The email stated:

After discussion with our new admin team, please note the following updates and begin using the new accommodations/modifications:

  - (a) Instead of a copy of notes/study guide; create a custom accommodation to say, 'Provide access to notes/study guide/guided notes.'
  - (b) Instead of BIPs for things like work avoidance, talking out, annoying sounds, etc., create a modification (accommodations section in [IEP online platform]), Behaviorally related, 'management system.'
  - (c) Bigger behaviors such as throwing chairs/desks, consistently attempting to physically harm others will still have a BIP.
  - (d) If a student is abusing 5-minute breaks, remove the accommodation.
5. Sometime after January 11, 2023, the District's records indicated a special education teacher who had to leave the January 11, 2023 meeting early made notes about the outcomes of the meeting, stating:

I left this meeting for an appointment before the meeting was finished. I did not hear the discussion that resulted in the Admin decisions to not do BIPs and remove break accommodations when this accommodation was being abused (see email of 1/11/23)...these decisions heavily impacted the Student's IEP for the January 20 meeting.

6. On or about January 12, 2023, the Parent was sent an IEP meeting invitation, delineating that team discussion would include annual goal progress, review of the current IEP, and a review of the Student's instructional needs. The record indicated that the Student's BIP was not a planned topic to discuss during the IEP meeting.
7. On January 20, 2023, the Student's IEP team, including the Parent, met to develop a new IEP. The meeting was attended by the case manager, two administrator/designees, two general education teachers, the guidance counselor, two special education teachers, and the speech language pathologist. Under the subsection describing whether behavior impedes the learning of the Student or the learning of others, the team wrote, "Student displays behaviors of elopement and refusal to engage in class activities, tasks, and assignments." In addition, under the subsection regarding Student strengths and concerns of the Parent, the team wrote, "Student is an 8th grade student...Student continues to need support throughout the day to complete grade-level work."

The January 20, 2023 IEP included six goals: two goals under social/emotional that include work completion and appropriate class participation; a math goal focusing on linear equations; a reading goal regarding comprehension; a writing goal targeting writing complete sentences and paragraph construction; and a communication goal on text evidence.

The "Program Accommodations/Modifications" section of the IEP included 20 accommodations for daily classroom work or testing situations. A behavior modification was also included and read, "behaviorally related: management system to be utilized daily, school wide (in person)."

The prior written notice (PWN) accompanying the IEP indicated that the IEP would be implemented on January 25, 2023. The PWN also stated that multiple members of the Student's WISE team attended the meeting (either in person or via Zoom), though their names were not included on the participant page of the IEP.

Meeting notes regarding the topics discussed during the IEP meeting did not include any mention of the Student's BIP. The record indicated that the Parent expressed a desire for a reduced workload for the Student, as well as the desire to have the Student pulled from class to complete work. Lastly, the Parent expressed the need for a 1:1 paraeducator to support the Student. Meeting notes do list all participants at the meeting, to include WISE staff and additional teachers who participated.

8. Per District directives, the Student's January 2023 IEP no longer included accommodations related to taking a break or a BIP.
9. On January 24, 2023, the special education teacher who notified colleagues of the January 11, 2023 meeting with administration, emailed another colleague, as well as the director of student support, about these changes to special education programs.

10. The Student's discipline file for the period after the January 20, 2023 IEP meeting and through March 2, 2023, indicated the following behaviors and subsequent discipline:
  - On January 25, 2023, the Student was involved in an altercation with another student and the infraction was categorized by the school administrator as "Fighting with Violence (Mutual)" and the Student was put on a five-day suspension through February 1, 2023.
  - On February 7, 2023, the Student left 3rd period class without permission, and did not sign out. The Student received three days of lunch detention from February 8–10, 2023.
  - On February 17, 2023, the Student was sent to the office for leaving class without permission. No discipline was given to the Student.
  - On February 17, 2023, the Student was referred to the office for not completing work and for taking out a phone multiple times during instruction. No discipline was given to the Student.
  - On February 24, 2023, the record indicates the Student was referred to the office for refusing to complete work, moving seats three times without permission, and touching students during class. No discipline was given to the Student.
  - On March 2, 2023, the Student was seen on camera vaping on school property and was referred to the student assistance program and served one day of suspension.
11. On January 31, 2023, the director of secondary student support emailed the executive director of secondary programs, indicating that OEO would be reaching out to discuss the Student and Parent's concerns regarding discipline at the school. The director of secondary support also requested the case manager reach out to the Parent to discuss concerns.
12. On February 3 and 8, 2023, the case manager emailed the Parent regarding the Parent's concerns.
13. On March 1, 2023, an IEP amendment meeting was held with the Parent and IEP team members, including the case manager, two special education teachers, two administrators, the school psychologist, the guidance counselor, the secondary superintendent, and other Parent invitees. The meeting invitation indicated that the Parent's concerns and the BIP would be discussed.
14. On March 1, 2023, following the IEP meeting, the PWN for the meeting indicated that the team agreed to reinstate the Student's BIP, as well as the accommodation to take breaks. In addition, the team decided to reevaluate the Student to determine current needs in the educational setting.
15. On March 21, 2023, a phone conference was held to discuss concerns regarding the Student's attendance and his avoidance of classes. Attendees included the Parent, OEO, and an administrator. During this phone conference, a plan was developed, and delineated in a PWN, to encourage the Student to attend more classes, and not just the last class of the day.

## **CONCLUSIONS**

**Issue 1:** The Parent alleged the District did not implement the special education services, including the BIP and break accommodations, in conformity with the Student's IEP from January 2023 through March 2023.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions, and the PWN ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made.

In this case, the District held an annual IEP meeting with the Parent on January 20, 2023, at an agreed upon time with the Parent. The IEP team included the Parent, the case manager, District school administrators, special education teachers, general education teachers, guidance counselor and speech language pathologist, and members of the Parent's WISE team. The Student's previous IEP in effect from January 25, 2022 through January 24, 2023 included a BIP and accommodations, allowing the Student to take frequent breaks. The invitation to the IEP meeting held on January 20, 2023 did not indicate any discussion of the BIP currently in place, and meeting notes indicate there was no discussion of the plan nor discussion of the accommodations related to the Student's breaks.

Special education staff implemented a directive given by the school administrator on January 11, 2023, whereby BIPs would only be developed in cases of student violence (e.g., throwing desks/chairs, harming others), and removing accommodations related to breaks if a student was abusing the five-minute breaks. Here, IEP team members did not alert the Parent to the removal of the BIP and the break accommodations from the Student's IEP, nor did they discuss the issue to make a team-based decision about the Student's need for a BIP or break accommodations based on the Student's individual needs. The PWN developed following the IEP meeting did not include information about the removal or discontinuation of the BIP and break accommodations per the administrative directive. Thus, subsequently, the break accommodation and BIP were not implemented for the Student. As the IEP team improperly removed this accommodation and the BIP, which resulted in a failure to implement, OSPI finds a violation.

The District acknowledged the Parent's concerns by scheduling an IEP amendment meeting for March 1, 2023, to specifically discuss the Student's BIP and the related Parent concerns as evidenced by the meeting invitation. The PWN completed after the IEP amendment meeting indicated that the team agreed to reinstate the Student's BIP, as well as the accommodations to allow for breaks. In addition, the team decided to initiate a reevaluation of the Student to determine the Student's current needs in the educational setting. As the District has already addressed the concerns for the Student, no Student specific corrective actions are needed. As corrective action, the District will be required to conduct training on developing IEPs based on student need and prior written notice.

**Issue 2:** The Parent alleged the District did not provide the Parent with an opportunity to provide input into the behavior services provided in the Student's IEP in the January 2023 meeting.

The law requires parents of a child with a disability to participate with school personnel in developing, reviewing, and revising the student's IEP. In this case, as discussed above, the Parent

did not have knowledge that the BIP and break accommodations would be removed from the current IEP, per school administration directive, and the IEP team also did not alert the Parent to these changes during the meeting. OSPI finds a violation as changes were made to the IEP without affording the Parent an opportunity to participate in these discussions. The above ordered training will also include training on parent participation in IEP meetings.

### **CORRECTIVE ACTIONS**

By or before **June 9, 2023, June 30, 2023, and September 8, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **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 23-46.

The following District staff will receive training: District special education administrators, and the following at the Student's school: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Parent participation in IEP meetings;
- IEP development and amendment;
- Adding or removing services based on student specific need; and,
- Prior written notice.

The training will include examples. The District may want to use the training module on "Prior Written Notice in 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/>.

By or before **June 9, 2023**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **June 30, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by July 14, 2023.

By **August 31, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 8, 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 May, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
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**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.)