

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-71

PROCEDURAL HISTORY

On September 17, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Auburn School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 20, 2021, 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 October 8, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on October 11, 2021. OSPI invited the Parent to reply.

On October 26, 2021, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District the same day. OSPI forwarded that information to the Parent on October 26, 2021.

On October 28, 2021, OSPI received additional information from the Parent. OSPI provided that information to the District on November 3, 2021.

On November 3, 2021, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District the same day. OSPI forwarded that information to the Parent on November 3, 2021.

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

ISSUE

1. Whether the District has followed proper special education discipline and suspension procedures since the beginning of the 2021–2022 school year?

LEGAL STANDARDS

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. 34 CFR §300.530(b)(1); WAC 392-172A-05145(2)(a).

Provision of Services During Disciplinary Removal (No Change of Placement): A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. 34 CFR §300.530(d)(3); WAC 392-172A-05145(2)(b). For all students, including students with disabilities, general education regulations require the following: during the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to: (i) Continue to participate in the general education curriculum; (ii) Meet the educational standards established within the district; and (iii) Complete subject, grade-level, and graduation requirements. WAC 392-400-610(1)(b).

FINDINGS OF FACT

2021–2022 School Year

1. The District's first day of school was September 8, 2021.
2. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of emotional behavioral disability, was in the 5th grade, and attended a District elementary school. At that time, the Student's June 2021 individualized education program (IEP) was in effect.

According to the District's response, the Student "is placed in the Pathways program at [her elementary school], which is a program designed to serve students with significant social/emotional and behavioral needs" and, the Student "receives specially designed instruction in the areas of reading, writing, math, and social/emotional, with communication as a related service."

The June 2021 IEP provided the Student with the following specially designed instruction each day:

- Social emotional/behavior: 280 minutes
- Math: 30 minutes
- Reading: 30 minutes
- Written Language: 15 minutes

3. On September 13, 2021, according to the District's response and the "Notice of Short-Term Suspension" included in the response:
The Student left the classroom without permission multiple times. The principal followed her for over an hour, during which time she played music loudly on her phone, threw her phone on the ground repeatedly, spit on the floor, yelled profanity in front of families and students, and threatened to kill the principal. These behaviors resulted in a short-term suspension of one day.
4. On September 14, 2021, the Student served a one-day suspension.

5. On September 15, 2021, the Student returned to school and according to the District's response and the "Notice of Short-Term Suspension" included in the response:

That day, one of Student's classmates provoked her at recess. Despite many staff members' attempts to intervene and redirect her peer's behavior, the student continued to insult and mock her, and Student responded in a physically aggressive manner. Multiple adults, including the principal, the program specialist, and the assistant principal responded to the incident and attempted to break up the fight. Student was highly escalated at this time and was unable to disengage from the other student. The adults prevented access to the other student and blocked Student from following the student into the building. At that time, she was repeatedly punching the principal and spitting at him, as well as screaming obscenities. The program specialist was assisting and at one point, she and the principal implemented a brief restraint. Student eventually made her way back into the school, yelling and making threats while running throughout the building. The principal ended up requesting assistance from the police department. This behavior resulted in a short-term two-day suspension.
6. The Student served a two-day suspension on September 16 and 17, 2021.
7. According to the District's response, as of October 26, 2021, the Student had been suspended from school for a total of three days (the suspensions on September 14, 16, and 17, 2021).
8. According to the District's response: "In an interview [conducted in response to the Parent's community complaint], the principal indicated that services were not offered [during] either [suspension]. An email from the Parent confirms that services were not offered during the one-day suspension that resulted from the September 13, 2021 incident."
9. In its response, the District proposed:

As a corrective action for the identified procedural violations, the District proposes conducting a review training with all building administrators on [special education] discipline law and procedures...This training will happen in-person or virtually and will occur by December 10, 2021.

The District also proposed that the training would include other general discipline related topics, such as WAC 392-400-430 (Suspensions and expulsions—General conditions and limitations) and WAC 392-400-455 (Suspensions and expulsions—Notice to student and parents).

CONCLUSIONS

Issue 1: Special Education Discipline and Suspension Procedures – The Parent alleged the District has not followed proper special education discipline and suspension procedures since the beginning of the 2021–2022 school year.

School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

A school district is only required to provide services during periods of removal to a student eligible for special education who has been removed from his or her current placement for ten school days or fewer in that school year, if it provides services to a student without disabilities who is similarly removed. General discipline regulations require that, for all students, during the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to: (i) continue to participate in the general education curriculum; (ii) meet the educational standards established within the district; and (iii) complete subject, grade-level, and graduation requirements.

Here, between the start of the 2021–2022 school year (September 8) and October 26, 2021, the Student was suspended for a total of three days for violations of a code of student conduct. This does not represent a disciplinary removal constituting a change of placement under WAC 392-172A-05155, which defines a disciplinary removal as a change of placement if the removal is for more than 10 days.

Regardless of the length of the disciplinary removal, the District was required to provide the Student with educational services that enabled the Student to: (i) continue to participate in the general education curriculum; (ii) meet the educational standards established within the District; and, (iii) complete subject, grade-level, and graduation requirements. The District, though, did not provide the Student with educational services during the three days the Student was suspended. This represents a violation of the IDEA.

To address this violation, the District proposed requiring certain staff to attend a training on proper special education discipline and suspension procedures. OSPI agrees with this proposal.

The District will also be required, though, to provide the Student with compensatory education—to address the educational services the Student should have received during the three days of suspension—but which the Student did not receive. Compensatory services are an equitable remedy and there is no requirement to provide minute-for-minute missed time. In this case, OSPI determines that the equivalent of one day of missed services based on the Student’s current IEP is equitable to remedy the violation.

CORRECTIVE ACTIONS

By or before **November 17, 2021, December 3, 2021, December 17, 2021, and January 14, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **November 17, 2021**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 280 minutes of specially designed instruction in social emotional/behavior; 30 minutes of specially designed instruction in math; 30

minutes of specially designed instruction in reading; and, 15 minutes of specially designed instruction in written language.

The District will provide OSPI with documentation of the schedule for services by or before **November 17, 2021**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. Because of the COVID-19 pandemic, the compensatory education may be provided remotely.

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 with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **January 14, 2022**, including those needing to be rescheduled.*

No later than **January 14, 2022**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **January 14, 2022**.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2021–2022 school year. The training will cover the following topics:

1. Special education discipline and suspension procedures, specifically:
 - a. WAC 392-172A-05145(2)(a)-(b); and,
 - b. WAC 392-400-610(1)(b).¹

The training will include examples.

¹ In its response, the District also proposed to provide training on regulations applicable to all students, including, in part, the following: WAC 392-400-430 (Suspensions and expulsions—General conditions and limitations); and WAC 392-400-455 (Suspensions and expulsions—Notice to student and parents). The District is free to also provide training on the foregoing regulations, but as these regulations are beyond the scope of the specific issue investigated during this investigation, training on them will not be required by these corrective actions.

The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with Puget Sound ESD staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 21-71.

By or before **November 17, 2021**, 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 **December 3, 2021**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by December 8, 2021.

By **December 17, 2021**, the District will conduct the training regarding the topics raised in this complaint decision.

By **December 17, 2021**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ___ day of November, 2021

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