

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-113**

### **PROCEDURAL HISTORY**

On September 19, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Kennewick 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 22, 2022, 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 7, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On October 11, 2022, OSPI received additional information from the District. OSPI forwarded the information to the Parent on the same day.

On October 17, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On November 10, 2022, OSPI interviewed the District special education director.

OSPI considered all of the 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 September 20, 2021. 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 develop appropriate measurable individualized education program (IEP) goals and conduct progress monitoring for the Student during the 2021–2022 school year?
2. Did the District implement the accommodation for visual supports according to the Student's IEP during the 2021–2022 school year?

### **LEGAL STANDARDS**

Purposes: The purposes of the regulations under 34 CFR Part 300 and Chapter 392-172A are to:  
1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act,

20 U.S.C. Sec. 1400 et seq.; 2) Ensure that all students eligible for special education services have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; 3) Ensure that the rights of students eligible for special education services and their parents are protected; 4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education services; and 5) Assess and ensure the effectiveness of efforts to educate students eligible for special education services. 34 CFR §300.1; WAC 392-172A-01005.

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and meet each of the student's other educational needs that result from the student's disability. Additionally, for students who take alternate assessments aligned to alternate achievement standards, the statement of measurable annual goals should include a description of the benchmarks or short-term objectives the student should meet. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed 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 those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323; WAC 392-172A-03105.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

### **FINDINGS OF FACT**

1. During the 2021–2022 school year, the Student was a three-year-old who attended a District preschool program and was eligible to receive special education services under the category of developmental delay.
2. In September 2021, the District conducted an evaluation of the Student. The District evaluated the Student in the areas of communication, motor, adaptive, personal-social, and cognitive. The evaluation included information from private evaluations in the areas of communication and occupational therapy. The District also referred to a developmental checklist, which was developed by the Centers for Disease Control and Prevention that the District used to assess the Student. The checklist listed developmentally sequenced tasks in different areas. The evaluation results showed that receptive language, expressive language, and language ability was at the 10th percentile or below. The Student's performance in gross motor, fine motor, perceptual motor, and overall motor was at the 5th percentile or below. The Student appeared to be "under-responsive." The Student's cognitive performance was delayed, but adaptive skills were within normal development. The adverse impacts of the Student's delays were reported as follows:

Communication: [Student] has a developmental delay/disorder in the area of communication. He is unable to complete skills that are typical compared to same age peers. He has difficulty expressing his thoughts, wants, needs, and desires to peers and adults. As well as comprehending language to complete tasks, activities, directions requested of him.

Motor: [Student] demonstrated decreased safety and security when completing gross motor tasks. Also, due to his poor registration to noise.

Cognitive: Without specially designed instructions, [Student] would have difficulties following routines and completing tasks as other same age preschool children.

3. On October 1, 2021, the District held a meeting to develop the initial IEP for the Student. The IEP team recorded presented levels and developed annual goals in the areas of communication, cognitive, and motor, as follows:

#### Communication

##### Present Levels

- Receptive Language - He could follow routine directions with gestures and identify body parts, but had difficulty with new or multi-step directions, identifying pictures or objects, following action words (run, jump)
- Expressive Language - Uses combination of single words (where go? I don't know, stop mom)
- Speech – Passed hearing screening. Omits initial and final consonants in some words

##### Goal and Benchmarks/Short Term Objectives

- [Student] will answer 'what' questions (what is this, what doing, what do you use) with object or pictures from 0% accuracy to 80% accuracy by October 2022.
- [Student] will decrease the phonological process of final consonant deletion (FCD) from 100% active to 0% active.
- [Student] will use two-word phrases to request, comment, or protest from 1 out of 4 opportunities to 3 out of 4 opportunities by October 2022.
- [Student] will perform action words (Ex. throw, jump, cut) from 0 out of 4 opportunities to 3 out of 4 opportunities.

Progress regarding the communication goals would be provided the Parent on a quarterly basis.

#### Cognitive

Present Levels: Currently [Student] is demonstrating 39 out of 76 cognitive skills on the...cognitive checklist. He is able to find things when hidden under two or three covers, points to one body part and scribbles on his own. We will be working on following 1-step verbal commands without gestures, knowing what ordinary things are for and matching items by color, shape and size. Parents reported that [Student] is able to point to one body part, scribble on his own, play simple make-believe games, build towers of 4 or more blocks and uses one hand more than the other.

Goal and Benchmarks/Short Term Objectives: Using age appropriate activities, [Student] will increase his cognitive skills from 39 to 44 or more in 4 out of 5 consecutive attempts; using the...cognitive checklist by 9/30/2022. Data will be collected weekly on targeted objectives.

- [Student] will be able to follow 1-step verbal commands without gestures 4 out of 5 attempts.
- [Student] will demonstrate what ordinary things are for example telephone, brush, spoon 4 out of 5 attempts.
- [Student] will be able to match items by shape, color and size 4 out of 5 attempts.

- [Student] will attend to a teacher/adult direction or task for 5 minutes 4 out of 5 attempts with no more than 2 verbal or visual prompts.

Progress reports regarding cognitive goals would be provided to the Parent three times a year.

#### Motor

Present Levels: [Student] has 13/19 skills on the...motor checklist. Overall he struggled with attendance to therapist driven tasks. With parent discussion, he is able to demonstrate more skills at home than what therapist observed. He is able to complete scribbling, with a full fist grasp. He was unable to load scissors or use correctly. He is able to place toys in appropriate slot, stack 2 blocks. He is able to run, maneuver obstacles and through surface transitions. He is also able to walk a balance beam with one foot on, and one foot off. He was able to throw and kick a ball and jump down from a higher surface. He is also able to get on/off a trike and propel. He needs a hand-held assist to access the gym equipment.

Goal and Benchmarks/Short Term Objectives: [Student] will increase his score on the...motor checklist age 2-3 from 13/19 skills to at least 16/19 skills 4 out of 5 consecutive trials. Data will be collected weekly on targeted objectives.

- Demonstrate an age-appropriate tripod grasp 4 out 5 attempts
- Snipping with scissors 4 out of 5 attempts
- 1 pt. balance 4 out of 5 attempts
- Catching (trap) 4 out of 5 attempts

Progress reports regarding motor goals would be provided to the Parent three times a year.

The Student's IEP included three accommodations: provide individualized/small group instruction; not wearing a mask; and use of pictures to reduce communication frustration and break down.

The IEP provided for the following special education services in a special education setting for 10 hours a week:

- Cognitive: 250 minutes, per week
- Communication: 30 minutes, per week
- Occupational therapy: 20 minutes, per week

According to the Parent and the District, the District unilaterally determined the Student would attend preschool two days a week because all three-years-olds attended two days a week. Four-years-old attended four days a week. The decision was not based on the Student's unique needs.

Regarding the least restrictive environment, the Student was placed in an "Early Childhood Separate School (Grade Level PK and age 3-5)." The IEP provided the following explanation for the separate setting:

[Student's] delays in cognitive, motor and communication affect his ability to participate in a preschool without the support of specially designed instruction. He would benefit from the supports available and the small group setting. This is the least restrictive environment for [Student] at this time.

4. According to the complaint, the Parent disagreed with placing the Student in a separate special education setting. The Parent stated the Student could benefit from contact with non-disabled peers. The prior written notice, dated the same day, proposed to initiate the IEP. No options were considered or rejected. The meeting notes provided by the District showed the IEP team discussed the Parent's concerns, including specific goals the Parent wanted. The Parent was concerned that the Student's cognitive and motor goals were not measurable.
5. In an interview with the District special education director (director), the director acknowledged that the Student's IEP used the wrong legal standard for determining placement and there was documentation that the Student did not necessarily need a separate setting in order to benefit from a general education preschool setting.
6. For the October IEP meeting, the Parent wrote a letter, expressing the Parent's concerns about the following:
  - "Visual support is needed to enhance [Student's] education."
  - "Targeting specific skills through clear and measurable goals is needed to enhance [Student's] education."
  - "Equal access to an early childhood general education curriculum, with appropriate modifications or accommodations, is needed to enhance [Student's] education."
7. On November 12, 2021, the first report on the Student's progress towards the annual goals was issued. The report provided the following progress information:
 

Communication

  - Yes/no questions: not mastered
  - "What is this?": not mastered (body parts 0/4 attempts, food 4/7 attempts)
  - Final consonant deletion: not mastered (20% active)
  - Two word phrases: not mastered (readily label items or repeat words, working on requesting items)
  - "Want \_": not mastered (picture and verbal cue 4/4 attempts, 0/4 independently)
  - Repeat two-word phrases: not mastered (0/4 independently)
  - Will say "no" to protest
  - Using "stop" and "no" to protest (0/4 independently)
  - Perform action words: not mastered (not wanting to participate – 1/4, with gestural cue – put in, throw)
  - Understanding pronouns (my/mine/your/yours): not mastered (my/mine 4/4 attempts, expressed "my turn," your/yours 0-1/4 attempts)

Cognitive: 36/76 cognitive skills: not mastered (beginning to match items by color, shape, and size, growth in sitting in circle area, completing crafts, requires support)

Motor: 13/19 skills to 16/19 motor skills: not mastered (no progress at this time)
8. On November 30, 2021, the District educational specialist observed the Student in the classroom for two hours at the request of the Parent because of concerns about programming and data collection. The observation noted the Student attended the speech/occupational therapy group and attempted to leave eight times. He was successfully prompted by staff to sit down the first seven times. The Student needed "hand-over-hand assistance to give a

'thumbs up' and to sign 'please.'" The Student then "struggled" to participate in a gross motor activity. The Student "eloped" from the group and began playing with toys until he ate a snack with the group. During playtime, the Student played with different toys and when playtime was over, the Student needed 10 prompts to clean up. At craft time, which involved line tracing and beading pipe cleaners, he required hand-over-hand assistance. After crafts, the Student was prompted to look at books until physical education (PE) class. The Student resisted wanting to play with toys and began crying while trying to leave. The Student attempted to kick staff. While walking to PE class, the Student "struggled" to stay in line and "needed assistance to walk safely with the class to PE."

9. According to the complaint, the education specialist's observation showed the District used almost all verbal prompts. The Parent also indicated that she did not observe visual supports being used with the Student except for the "first/then" board. The Parent also alleged the occupational therapist (OT) denied in meetings using visual supports.

10. On December 15, 2021, the District provided the Student's second special education progress report, which included progress as follows:

Cognitive: 40/76 cognitive skills: not mastered (one step commands 4/5 attempts, demonstrating ordinary things 4/5 attempts, matching items by shape, color, and size 4/5 attempts, attending to adult direction for 5 minutes 4/5 attempts, sitting in circle time with maximum support for more than 5 minutes but attending for 0 minutes)

Motor: 13/19 motor skills: not mastered (functional grasp 1/6 attempts, snipping with scissors 1/2 attempts, one point balance 0/2 attempts, catch a trapped ball 0/3 attempts)

11. On December 16, 2021, the Student's IEP team met to amend the IEP. The IEP team reviewed the November 2021 observation and discussed the Student's progress. According to the meeting minutes, the team discussed the role of the behavioral specialist. The team discussed the Student's improvement in matching/sorting and sitting in a circle for five minutes "with supports." The minutes stated the general statements in the progress report made it difficult for the Parent to understand the Student's progress. The Parent stated that attending two days a week was difficult for the Student because of a lack of consistency. The team agreed that the benchmarks/short term objectives would be changed to separate goals "to help with clarity during progress monitoring."

The IEP team proposed the following cognitive goals:

- When given the opportunity, [Student] will follow 1-step verbal commands without gestures going from 0 out of 5 consecutive attempts to 4 out of 5 consecutive attempts by 9/30/2022. Data will be collected on a discrete trial data sheet.
- When given the opportunity, [Student] will attend to a task going from 0 minutes to at least 5 minutes 4 out of 5 consecutive attempts with no more than 2 verbal or visual prompts by 9/30/2022. Data will be collected on a discrete trial data sheet.

12. In February 2022, the documentation indicated that the education specialist observed the Student again in the classroom. However, there was no report provided.

13. On March 9, 2022, the District provided a special education progress report.

Communication

- Answering "what" questions: not mastered ("what's this?" 75–100%, "what doing? 0–25%)
- Final consonant deletion: mastered (0%)
- Two-word phrases: not mastered ("great growth," spontaneously using more two-word phrases, using three-word phrases)
- Action words: mastered (4/4 attempts)

Cognitive

- Attention to task: not mastered (from 2 minutes and 23 seconds to 3 minutes and 53 seconds)
- Follow one-step verbal commands without gestures: not mastered (follows with gestures but struggles without gestures)

Motor

- Trapping a ball: not mastered (1/5 attempts)
- Standing on one foot: mastered (4/5 attempts)
- Loading scissors: not mastered (0/5 attempts)
- Tripod grasp: not mastered (0/5 attempts but making functional strokes)

14. On March 11, 2022, the Student's team met to "review the SPED Specialist report and progress notes." The team discussed the educational specialist's observation of the Student. The notes stated that although the Parent was concerned that visual supports were not implemented during the beginning of the year, they were now in place. The Student's special education teacher shared that the Student had made "huge growth" and that data had been collected in different setting. But the Student had hit himself in the head "a few times" when frustrated or dysregulated.

15. The District proposed the following IEP amendments to the Student's goals in the areas of cognitive, communication, and motor:

- When given the opportunity, [Student] will follow 1-step verbal commands without gestures going from 0 out of 5 consecutive attempts to 4 out of 5 consecutive attempts by 9/30/2022. Data will be collected on a discrete trial data sheet.
- [Student] will demonstrate an understanding of the following prepositions (in, on, under) from 0 out of 4 opportunities to 3 out of 4 opportunities, during elicited tasks (e.g., put ball in box, put ball under table) with visual and verbal prompts, over 3 consecutive therapy sessions, as measured by ongoing SLP therapy data, and SLP observation/judgment by October 2022.
- [Student] will demonstrate an understanding of the following pronouns (my, mine, your, yours) from 0 out of 4 opportunities to 3 out of 4 opportunities during elicited tasks (e.g., show your shoes, show my shoes) with visual and verbal prompts over 3 consecutive therapy sessions, as measured by ongoing SLP therapy data, and SLP observation/judgment by October 2022.
- [Student] will use 3-word phrases to request, comment, or protest from 1 out of 4 opportunities to 3 out of 4 opportunities by October 2022.
- [Student] will go from not catching a medium sized ball to catch or trapping a medium sized ball 4 out of 5 attempts by 9/30/22.
- [Student] will go from standing on one foot for 1 second to 2–3 seconds on one foot 4 out of 5 attempts by 9/30/22.
- [Student] will go from not using scissors appropriately to loading his scissors and snipping 4 out of 5 attempts by 9/30/22.

- [Student] will go from using a full fist grasp with spontaneous scribbling to using a functional tripod grasp 4 out of 5 attempts by 9/30/22.

16. On May 13, 2022, the Student's IEP team met to address the Parent's request to increase the Student's program from two days a week to four days a week. The meeting notes stated, "[Program coordinator] reiterated the current model at [preschool] program, 2 days per week for 3 year olds and 4 days per week for 4 years old transitioning to Kindergarten the following year..." In response to the Parent's request for four days a week, the notes stated the coordinator "suggested the family seek out private school options to supplement." The meeting notes indicated that when the Parent was asked in what areas did the Student need more support in, the Parent replied, consistency in scheduling and programming. The staff reported the Student made progress by having fewer meltdowns and was transitioning more successfully between activities. Regarding motor activities, the Student was learning to catch a ball, but the Parent reported many refusals. The staff reported using "visuals and visual modeling." The team also discussed extended school services which the Student did not qualify for, in part, because other students "would not be peer models for [Student]."

17. The prior written notice addressed the Parent's request for the Student to attend the program four days a week. The notice stated the District agreed to provide programming for the Student four days a week for the 2022–2023 school year because "that was appropriate."

18. On June 7, 2022, the District provided a report regarding the Student's progress towards the goals. Progress was as follows:

Cognitive

- Attending to task: mastered (8 minutes and 48 seconds)
- One-step commands: not mastered (3/5 attempts)

Communication

- "What" questions: not mastered (0/4 attempts, 1/10 attempts, 3/10 attempts)
- Understanding prepositions: not mastered ("in"-3/4 attempts to 4/4 attempts, "on"- 0-2/4 attempts, "under" – 0/4 attempts)
- Three-word phrases: mastered

Motor

- Trapping ball: not mastered (1/5 attempts)
- Standing on one foot: not mastered (1/5 therapy sessions)
- Loading scissors and snipping: not mastered (loading 0/5 attempts, snips 2/5 attempts)
- Functional tripod grasp: not mastered (1/4 therapy sessions)

19. The Student no longer attends school in the District.

20. The District's response to the complaint included statements by the Student's special education teacher regarding how visual supports were implemented with the Student. The visual supports included, but were not limited to, a personal communication board, a "first/then" board, pictures to identify emotions, a two-three picture board, and visuals placed on the scissors.

21. The District also provided pictures of visual supports that were used with the Student. The examples of visual supports included the following:

- Large visual schedule of the school day
- Large communication board for students to communicate their needs
- Teacher wears a lanyard with visuals of locations, activities, and requests
- A visual "first/then" board for transitions
- Visuals for holding a pencil and scissors

## CONCLUSIONS

**Issue One: Measurable Goals and Progress Monitoring** – The complaint alleged the District failed to develop measurable IEP goals for the Student in the least restrictive environment and conduct progress monitoring of the goals. In addition, the complaint stated that the Student's program that provided special education services for two days a week did not meet the Student's unique needs. A district is required develop measurable annual goals and measure progress the student's progress towards the annual goals. A district is required to ensure a student is placed with non-disabled peers to the maximum extent appropriate and the program length is based on the student's unique needs.

Measurable Goals: Here, the Student's October 2021 IEP provided annual goals in the areas of cognitive, communication, and motor. The cognitive and motor goals used a developmental checklist as the goals' present level and criteria, such 39 out of 44 of the developmental skills listed in each area. The goals themselves did not specify which skills were being measured or the criteria for progress, such as 4/5 attempts or 80%, although the goals did have accompanying benchmarks/short term objectives that included criteria. These benchmarks/short term objectives did clarify what skills were being addressed. However, the requirement is that annual goals are measurable, which the cognitive and motor goals were not. A violation is found.

The cognitive and motor goals were later changed in March 2022; the benchmarks/short term objectives were dropped, but the updated annual goals were measurable. The communication goals in both the October 2021 and March 2022 IEPs, which did not have benchmarks/short term objectives, were measurable. To address the violation, the District is required to conduct training regarding measurable goals and is required to monitor the development of IEP goals in the District's preschool. The District is required to provide monthly reports to OSPI to ensure that IEP goals are measurable.

Progress Monitoring: Although the October 2021 cognitive and motor IEP goals were not measurable, the District was able to conduct progress monitoring using the benchmarks/short term objectives until the goals became measurable in the March 2022 IEP. The Student's progress reports provided sufficient information to determine whether the Student was making sufficient progress towards the annual goals. No violation is found.

Program Length: In the October 2021 IEP, the District made the decision that the Student would receive special education services two days a week. The District acknowledged the decision was a unilateral decision, based on the Student's age. That is, all three-year-olds received services two

days a week. The decision regarding how many days a week a student should receive services must be based on the student-specific data and consistent with the student's abilities and needs. Because the District made a categorical decision solely based on age that the Student would receive services two days a week, a violation is found. The District is required to conduct training to preschool staff regarding decisions about program length. The District is required to monitor IEP team decisions and provide monthly reports to ensure compliance.

Least Restrictive Environment: To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. First consideration must be given to placement in a regular classroom with any necessary supplemental aids and services to make that placement successful before considering more restrictive placement options. The least restrictive environment for a child with a disability must be determined on an individual basis based on the child's IEP. Categorical decisions, such as the student's disability, violate the IDEA's requirement for individualized educational planning.

The October 2021 IEP placed the Student in a separate special education classroom. The IEP stated:

[Student's] delays in cognitive, motor and communication affect his ability to participate in a preschool without the support of specially designed instruction. He would benefit from the supports available and the small group setting. This is the least restrictive environment for [Student] at this time.

The explanation for the Student's placement infers that the Student could not receive specially designed instruction in the regular preschool and supports would be available only in the separate special education classroom. The explanation does not address why the Student could not benefit from being with non-disabled peers with the use of supplementary aids and services. The District acknowledged that the IEP team did not consider the full continuum of placement options, such as the regular preschool, when making the Student's placement decision and again made a categorical decision based on the Student's disability, rather than the Student's unique needs. A violation is found. The District is required to conduct training regarding the least restrictive environment and monitor the District's preschool placements to ensure that decisions are based on the correct legal standard.

Prior Written Notice: A district is required to provide a parent with a prior written notice whenever the district proposes or refuses to initiate or change the identification, evaluation, placement, or provision of a free appropriate public education (FAPE) of a student. The notice must include an explanation or rationale for the district's decision.

In the October 2021 IEP meeting, the Parent disagreed with the Student's placement in a separate special education classroom. However, the prior written notice did not address the Student's placement and specifically the explanation why the District proposed the separate classroom. The

District is required to provide training regarding prior written notice and monitor whether prior written notices are in compliance.

**Issue Two: Visual Supports** – The complaint alleged the District failed to provide visual supports to the Student. A district is required to provide special education services and accommodations in conformity with the IEP.

Here, the Student’s October 2021 IEP provided the Student with an accommodation for “use of pictures to reduce communication frustration and break down.” The IEP did not clarify when or where the accommodation would be implemented. The Parent alleged the District did not provide sufficient visual supports based on the November 2021 observation by the education specialist and the Parents’ observations at school, albeit limited observations. The Parent stated the Student was very visual and did not respond as well to verbal prompts. The observation report indicated that the staff made “prompts” to the Student but did not specify whether the prompts were verbal, visual or both.

The District’s response provided a description of visual supports that were used with the Student in classroom that included a personal communication board, the teacher’s lanyard with pictures of activities, daily schedule pictures, and the “First/then” board. It should also be noted that one of the Student’s goals was to follow one-step commands without gestures. Assuming the commands were verbal, this goal would entail the staff providing verbal directions to the Student and not just visual supports. Based on the documentation, the District reasonably implemented the accommodation for use of pictures. No violation is found.

### **CORRECTIVE ACTIONS**

By or before **December 9, 2022, January 20, 2023, February 1, 2023, March 1, 2023, April 1, 2023, May 1, 2023,** and **June 1, 2023,** the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By **January 13, 2023,** the District special education director, in collaboration with the Educational Service District or a private trainer, will provide training to District special education preschool staff, including administrators. The training will address the following, including the findings of this complaint:

- Determining IEP services based on need, including program length
- Measurable annual goals
- Least restrictive environment
- Prior written notice

OSPI recommends supplementing the prior written notice training required here with the prior written notice training through eLearning for staff.

By **December 9, 2022**, the District will provide OSPI with a copy of the training. OSPI will provide feedback as necessary. OSPI must approve the training materials.

By **January 20, 2023**, the District will provide OSPI with documentation that all necessary staff has received the training.

By **December 2, 2022**, the District will develop a spreadsheet or similar system for monitoring IEP team decisions for all District preschoolers receiving special education services. The spreadsheet will list each student with an IEP in preschool, the IEP date (including amendments), the program length, whether the annual goals are measurable, the students' placement, the rationale for the placement, and prior written notice.

The special education director, or their designee, must log the data, track the data, and report the data to OSPI on a monthly basis, beginning February 2023 and ending June 2023. The report will be due to OSPI by the first day of each month. Based on the data, OSPI and the District will determine whether further training, coaching, or other interventions are needed to ensure compliance is achieved and maintained.

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 18th day of November, 2022

Dr. Tania May  
Assistant Superintendent of Special Education  
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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.)