

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-46

PROCEDURAL HISTORY

On March 20, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant)¹ regarding a student (Student) attending the **[REDACTED]** (Local Educational Agency (LEA)). The Complainant alleged that the LEA violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 24, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the LEA Superintendent on the same day. OSPI asked the LEA to respond to the allegations made in the complaint.

On April 28, 2020, OSPI received the LEA's response to the complaint and forwarded it to the Complainant that same day. OSPI invited the Complainant to reply.

On May 8, 2020, OSPI received the Complainant's reply. OSPI forwarded that reply to the LEA that same day.

On May 13, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the Complainant. OSPI received the requested information from the Complainant on May 14, 2020. OSPI forwarded that information to the LEA that same day.

On May 13, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the LEA. OSPI received the requested information from the LEA on May 15, 2020. OSPI forwarded that information to the Complainant on May 18, 2020.

On May 19, 2020, OSPI received additional information from the Complainant. OSPI forwarded that information to the LEA on May 20, 2020.

On May 19, 2020, OSPI received additional information from the LEA. OSPI forwarded that information to the Complainant on May 20, 2020.

OSPI considered all of the information provided by the Complainant and the LEA as part of its investigation.

ISSUES

1. Did the LEA follow proper special education discipline procedures in responding to the incident that took place on December 6, 2019?
2. Did the LEA implement the Student's behavioral intervention plan (BIP) on December 6, 2019?
3. In the fall 2019 semester, did the LEA follow proper individualized education program (IEP) development procedures? Specifically, did the LEA amend or revise the Student's IEP, as

¹ The Complainant is the Student's grandmother.

appropriate, to address any change in need the Student had in behavior/mental health during that time related to the Student's disability?

4. Did the LEA ensure the Student's participation in the November 5, 2019 meeting, in accordance with WAC 392-172A-03095(2)(a)?

LEGAL STANDARDS

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days; or, when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the individualized education program (IEP) team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, the IEP team must either: conduct a functional behavioral assessment (FBA), unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the student; or, if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and, except for special circumstances, return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP. 34 CFR §300.530(f); WAC 392-172A-05147.

When a disciplinary exclusion exceeds ten school days and the behavior in question is found not to be a manifestation of the student's disability, a district may apply the same relevant disciplinary procedures, in the same manner and for the same duration as it would to a student not eligible for special education, except that: the student must continue to receive services that provide a FAPE and enable the student to continue to participate in the general education curriculum and progress toward meeting annual IEP goals, even if services are provided in another setting; and receive, as appropriate, a functional behavioral assessment and behavioral intervention services

that are designed to address the behavior violation so that it does not recur. 34 CFR §300.530(c)-(d); WAC 392-172A-05148.

Discipline – Special Circumstances: School personnel may remove a student to an interim alternative educational setting for not more than forty-five school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if a special circumstance is present. A special circumstance is present if a student: (a) carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a school district; (b) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a school district; or (c) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a school district. WAC 392-172A-05149.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2); *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "within a reasonable period of time and without undue delay;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's

school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Provision of Educational Services during Suspensions Related to Behavioral Violations: 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 less in that school year, if it provides services to a student without disabilities who is similarly removed. WAC 392-172A-05145(2)(b). However, a school district may not suspend the provision of educational services to a student in response to behavioral violations. 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. When providing a student the opportunity to receive educational services under this section, the school district must consider: (i) Meaningful input from the student, parents, and the student's teachers; (ii) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and (iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services. As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include: (a) A description of the educational services that will be provided; and (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section. WAC 392-400-610.

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or

regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

IEP Revision: 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. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. 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.

Progress Reports: 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).

Transfer of Rights at Age of Majority: All of the IDEA procedural safeguards, duties, and responsibilities transfer to a student at age eighteen. School districts must give any required notices to both the adult student and the parent after rights transfer to the adult student. WAC 392-172A-05135.

Parent and Adult Student Participation in IEP Development: The parents of a child with a disability, as well as adult students with a disability, are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP. This is an active role in which the parents and adult students (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, Question 5). A meeting may be conducted without a parent or adult student 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. A school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting. WAC 392-172A-03100.

Student Participation in IEP Meeting when Postsecondary Goals and Transition Services Considered: The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered. WAC 392-172A-03095(2)(a)-(b).

FINDINGS OF FACT

2018-2019 School Year

1. On November 7, 2018, the Student's individualized education program (IEP) team developed a new annual IEP for the Student. The Student's November 2018 IEP provided the Student with, in part, the following specially designed instruction in a *general education setting*:
 - **Social/Emotional Skills:** 30 minutes 5 times a week (to be provided by a general education teacher)

The November 2018 IEP included, in part, the following measurable annual goal:

- **Social/Emotional Skills:** By November 6, 2019, when given small group or whole class discussion Student will politely interact with peers improving frequency of social communication skills from 20% to 60% accuracy over 3 consecutive trials as measured by teacher data.

The November 2018 IEP said that the Student's progress on the annual goals in his November 2018 IEP would be reported via a written progress report each quarter.

The 'Present Level of Educational Performance' portion of the November 2018 IEP read, in part:

Social/Emotional: Student works on group assigned tasks alone and does not engage in conversation with his peers. A typical 10th grade student is able to work with his/her peers when given a group assignment and is able to interact through conversation with peers. Student is unable to meet these grade level expectations, and therefore requires specially designed instruction in the area of social behavior skills.

2019-2020 School Year

2. The LEA's first day of school was September 3, 2019.²
3. At the start of the 2019-2020 school year, the Student qualified for special education services under the category of intellectual disability, was in the eleventh grade, and attended a charter school (LEA). At that time, the Student's November 2018 IEP was in effect.
4. According to the LEA, the Student's 2019-2020 class schedule was as follows:
 - **Period 1:** Design
 - **Period 2:** Physical Science

² The 2019-2020 calendar available on the LEA's website did not contain the start and end dates for the respective quarters in the 2019-2020 school year.

- **Period 3:** Language and Literature
- **Period 4:** Individuals and Societies

- **Period 5:** Leadership

5. The LEA's response included a 'Contact Attempt Report' that stated on September 27, 2019, the LEA invited the Student (via a letter) to attend a meeting scheduled for November 5, 2019. According to this 'Contact Attempt Report,' the Student confirmed that he could attend the November 5, 2019 meeting that same day.
6. The LEA's response also included a 'Notice of Meeting' document, dated September 27 2019. This 'Notice of Meeting' document related to the meeting scheduled for November 5, 2019. It included a list of individuals invited to attend the meeting. The Student was not listed as being one of the individuals invited to attend.
7. The LEA's response included a 'Contact Attempt Report' that stated on October 1, 2019, the LEA invited the Student (via a letter) to attend a meeting scheduled for November 5, 2019. According to this 'Contact Attempt Report,' the Student confirmed that he could attend the November 5, 2019 meeting that same day.
8. On October 23, 2019, a 'Psycho-Educational Evaluation' of the Student was completed by Presence Learning. Regarding the Student's social/emotional needs, the October 2019 evaluation report noted, in part:

Behavior and collaboration during group work: Student's math teacher shared that he initiates conversation with specific peers and usually does not interact with many outside of his small group. He can stay on track when working with hands-on projects but has more difficulty if an academic task is too difficult or if he perceives it as "boring." He may derail conversation and focus of the group by talking about topics of his interest. His other teachers generally provide similar feedback-while he communicates well he loses focus and has difficulty staying on track.

...

[Results of Student's Self-Assessment in the area of Social-Emotional/Behavioral]

Several scales fell within the average or typical range for a student Student's age. He has a generally positive attitude toward school, does not experience anxiety, problems with attention or self-control, and does not experience unusual thoughts or feelings. Behavior/thoughts related to depression fell in the clinically significant range. Student reports generally feeling sad, misunderstood, and/or feeling that life is getting worse and worse. He reports sometimes being dissatisfied with his ability to perform a variety of tasks even when putting in substantial effort: Student also reports dissatisfaction with relationships and at times feels isolated and lonely. He also reports challenges with his relationship at home. During an interview, Student shared thoughts and concerns about the uncertainty of his future, such as where he will live, if he will see his school friends again, and how he will obtain a job. Student expresses a desire for building stronger relationships outside of school, engaging in activities with friends, and living on his own one day. The IEP team is encouraged to focus transition efforts on connecting Student to resources that will help establish a plan of action for Student to accomplish his post-secondary goals. The team may design class projects and assignments that are directly and functionally related to his post-secondary goals.

9. As of October 24, 2019, the Student had made the following progress on the measurable annual goals included in his November 2018 IEP:
- **Reading Comprehension:** Insufficient Progress
 - **Math Calculation/Problem Solving:** Insufficient Progress
 - **Adaptive Skill Development:** Insufficient Progress
 - **Social/Emotional Skills:** Emerging Skill³
 - **Written Expression:** Emerging Skill

There is no indication from the record produced to OSPI by both the LEA and the Complainant, that the Complainant or Student was provided with a copy of the October 24, 2019 progress report.

10. On November 5, 2019, the LEA completed its own evaluation of the Student. Regarding social emotional, the LEA's November 2019 evaluation report adopted the Student's social-emotional/behavioral self-assessment from the October 2019 'Psycho-Educational Evaluation' completed by Presence Learning.

The copy of the November 2019 evaluation report included in the LEA's response included a page for "evaluation team members, signatures and conclusions." No team members' signatures appear on this page. However, this page listed (in typed text) certain individuals. The Student was not found on this typed list.

The November 2019 evaluation report does not contain a statement conclusively showing the Student attended the November 5, 2019 meeting. However, the Student's input was recorded within the November 2019 evaluation report:

Student knows what he wants after high school -to live independently and work, but he doesn't know how to obtain that goal. He is interested in accessing support and resources in order to find independence. Student shares that he is also aware that his "brain" works and is wired differently than most peers. He feels he has made progress in school over the years, but states he is not at the same level as most peers. Student is willing to put in the work if directions/assignments are explained to him explicitly. Student thinks grading is irrelevant, most times he will refuse to do a task unless it can help him in a functional/purposeful way.

11. On November 5, 2019, the Student's IEP team developed a new annual IEP for the Student. The Student's November 2019 IEP provided the Student with the following specially designed instruction in a *general education setting*:
- **Social/Emotional Skills:** 30 minutes 5 times a week (to be provided by a general education teacher)
 - **Reading Comprehension:** 56 minutes 4 times a week (to be provided by a general education teacher)
 - **Written Expression:** 56 minutes 4 times a week (to be provided by a general education teacher)

³ The October 24, 2019 entry for the Student's November 2018 social/emotional skills goal only includes the text "emerging skill"—it does not include any narrative statement or more specific information.

- **Math Calculation/Problem Solving:** 56 minutes 4 times a week (to be provided by a general education teacher)
- **Adaptive Skill Development:** 30 minutes 5 times a week (to be provided by a general education teacher)

The November 2019 IEP included, in part, the following measurable annual goal:

- **Social/Emotional Skills:** By November 4, 2020, when given tasks or situations that increase feelings of anxiety/depression/uncertainty, Student will access support from a trusted staff member or peer as demonstrated by requesting time, identifying and sharing concerns, and creating a plan improving relationships and self-advocacy from 0/5 opportunities to 3/5 opportunities over 3 consecutive trials as measured by teacher data.

The November 2019 IEP stated that the Student's progress on the annual goals in his November 2019 IEP would be reported via a written progress report each quarter.

The 'Present Level of Educational Performance' portion of the November 2019 IEP read, in part:

Adverse Impact Summary: Student's intellectual disability results in significantly below average general intellectual functioning, as well as deficits in adaptive behavior.

...

Social/Emotional...While Student has made progress in this area since his last annual IEP, Student continues to be unable to meet...grade level expectations [regarding working on group-assigned tasks by engaging in conversation with his peers], and therefore requires specially designed instruction in the area of social behavioral skills.

...

Age Appropriate Transition Assessment...Student is interested in accessing support and resources in order to gain independent...**Preferences:** Student indicates that he would prefer to live and work independently after high school...[His] goal [is to become] a utility worker for the Washington State Water and Power company. Based upon a student interview...Student is interested in...technology and exploring google maps. He is interested in pursuing a career in either construction/utility work or something in the area of space exploration/research.

The 'Secondary Transition' portion of the November 2019 IEP included information on education/training and employment that is focused on the goal of the Student becoming "a utility worker for the Washington State Water and Power Company." The 'Secondary Transition' portion of the November 2019 IEP also included a 'course of study' necessary for the Student.

The copy of the November 2019 IEP included in the LEA's response included a page for meeting participant signatures. No team members' signatures appear on this page. However, this page does list (in typed text) certain individuals. The Student was not found on this list. The November 2019 IEP does not contain a statement conclusively showing the Student attended the November 5, 2019 meeting. However, the Student's input was recorded within the November 2019 IEP.

12. According to the LEA's response, it was "able to hold [the November 5, 2019 meeting] with Student in attendance."

According to the Complainant: "Because of the Student's developmental disability, [I] would think that the Student would have needed an advocate to be there on his behalf. If there was no one with him, [I] do not think that he would be cognizant of content or the repercussions of the meeting."

13. During the course of this investigation, OSPI's investigator asked the Student whether he recalled attending a meeting with LEA staff on November 5, 2019, and, if so, whether the Student was able to understand what was discussed during that meeting. (The Complainant helped the Student in his response.)

The Student said he does not specifically recall the details of a meeting on or about November 5, 2019. But that November 2019 was a challenging time for the Student as the "family [was] dealing with end of life issues with [Student's grandfather]."

14. During the course of this investigation, the LEA's special education director provided the following written statement to OSPI regarding the November 5, 2019 meeting: "We combined Student's re-evaluation and IEP meeting into one in November and invited Student to the meeting. Student's mom showed up after not having communicated anything about attending, and did not bring Student."

15. According to the Complainant's reply, as of November 7, 2019:

The [LEA] had been notified...about the loss of Student's grandfather. It was a traumatic family experience. If the Student [was] checking-in daily with [his] case manager, why didn't that person help him through this difficult time? Many students with special needs have unique emotional challenges in dealing with trauma.

16. The LEA was on break from November 27, 2019 through November 29, 2019.

17. The LEA's response included the following 'chronology of events' related to the incident that took place on December 6, 2019:

Student mentioned to multiple students that he was going to shoot up the school and then proceeded to go to his book bag then the students began to run from the commons area where all of this took place. The students came to the principal and the vice principal with concerns about the comment. When questioned separately, the students had the same verbiage and story about what Student had said. When Student was questioned about it by the vice principal, he initially stated he was getting his coat out of his back pack. Then when questioned a second time he stated that he was upset because he saw a female student that he was not supposed to be around and it frustrated him so he made the comment. At that point the vice principal conferred with the principal and we decided to emergency expel Student. The vice principal contacted Student's father.

9:45am – The vice principal spoke with the Student's father, informing him of the situation. He stated, you should call the police on Student. I then stated it would be better for you to come pick him up but the Student's father stated, 'He's 18 and I'm tired of dealing with

[this]...The vice principal said, 'well someone has to come pick him up. He tells me that he will come pick him but it will be awhile.' The vice principal reminded the Student's father it [was the LEA's] half-day and [the students] get out at 12:30. He responded with I'll be there by then. The vice president then informed him that Student would be waiting in the front office.

12:45pm – The vice principal was called to the front office because Student's grandmother (Complainant) wanted to speak to him. Complainant began to communicate the dysfunction that exist between her son (Student's father) and her former daughter-in-law. Complainant also communicated that it didn't seem as if the Student's school is a good place for Student to be due to the extreme challenges he's had in his life. At that moment, the superintendent walked in and was given a recap of what had been communicated. This is the first contact that...the school had...with Complainant regarding Student's program. Typically we work with Student's father. Prior to Student's mom [not being as involved in Student's educational program], we worked with mom. The superintendent suggested that it has been very difficult to get consistent support from the family for Student. The superintendent indicated that Student has been with our school for five years and due to his age and plan for after high school we probably needed to start looking at vocational programming for Student and perhaps a more restrictive environment. Complainant suggested that Student is in desperate need of intense therapy due to the death of his twin brother and assured us that therapy would take place. We indicated that we would require a mental health/at-risk assessment before Student could return to school, if that was what the family decided they wanted to do (return to school). We discussed a number of options for educational programs for Student given his age and educational needs. When asked by Complainant about what programs we could provide Student, we indicated that we have a resource room and inclusion program. When students have unique needs, we have to look for programs we can contract with to meet his IEP goals, etc. In this instance, after a recent reevaluation and [creation of a new annual] IEP, we were currently...meeting his IEP goals and if the family wanted Student to have something more restrictive and/or a vocational program we would need to contract the services out—likely to the local school district and [we] would be happy to work with the family to find a good fit. Things like, a more self-contained vocational program, a work program, etc. were discussed. We also stated that he would be on a suspension due to the severity of the incident until the end of the winter break. At that point, we (the school and family would need to meet to discuss the best learning environment for Student). If the family found an alternative learning solution for him we would work with that school or agency. Complainant left that conversation satisfied.

18. The LEA's response included a letter from the LEA to the Student's parents, dated December 6, 2019. It read:

It is my duty to inform you that your child has been placed on Emergency Expulsion (EE) from [his high school] and must remain home.

As we discussed on 12/6/2019 at 12:45pm, with our Superintendent present, we believe the Student's current school cannot accommodate the needs for Student. During the duration of the emergency expulsion, your child is not allowed on any [LEA] property or at any [LEA] sponsored event.

For the following reasons: On 12/06/2019 at 9:29am, Student mentioned to multiple students that he was going to shoot up the school and then proceeded to walk to his book

bag [and] then the students began to run from the commons area which is where all of this took place. When questioned about it by our vice principal, Student initially stated, he was getting his coat out of his backpack. Then when questioned a second time, he stated that he was upset because he saw a female student that he was not supposed to be around and it frustrated him so he made the comment. At that point, the vice principal conferred with the principal and we decided to emergency expel Student.

After investigating this matter, we have concluded that there is good and sufficient reason to believe that your child's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the education process.

19. On December 12, 2019, the Student's mom emailed the LEA, stating: "I need to know if Student is permanently expelled or not. I need to be able to plan alternative options if he is [permanently expelled]. It's been a week and I've called repeatedly, with no response."
20. On December 16, 2019, the vice principal emailed the Complainant two educational "options" for the Student to consider so as to "finish [his] high school diploma as well as get job training."⁴
21. According to documents submitted with the LEA's response, as of December 20, 2019, the Student's December 6, 2019 emergency expulsion was converted to a short-term suspension.

In the course of this investigation, OSPI's investigator asked the LEA what the implications of this change were—specifically, given the change to a short-term suspension, what was the earliest date the Student could have returned to his school?

In response, the LEA stated: January 6, 2020.

OSPI's investigator then asked if either the Student or the Complainant was informed of this fact. The LEA's response to this question was: "Our protocol is to mail the letter to the parent. The [assistant principal] left a few messages for his mother and did not get a return call."

The Complainant stated that neither her, the Student, nor the Student's father, were told the LEA changed the emergency expulsion to a short-term suspension and that the Student could return on January 6, 2020.

22. December 20, 2019 represented what would have been the tenth day of school for the Student after the December 6, 2019 incident.
23. The LEA was on break from December 23, 2019 through January 3, 2020.
24. Based on the documentation in the complaint, the Student did not return to the school on January 6, 2020 when his short-term suspension was over. The Complainant stated the Student

⁴ These two options were: the Job Corps and Open Doors. The LEA's counselor was the one that came up with these options, and the vice principal forwarded them to the Complainant.

never returned to the school for services of any kind, and that the Student's family was not informed of any services the LEA was prepared to make available to the Student.

25. On January 28, 2020, the LEA's connection strategist emailed the Student's father, stating, in part: "Before I withdraw Student from our school I need a records request from his new school. Can you have that sent my way?"
26. On February 12, 2020, the Complainant emailed the vice principal, stating her confusion over correspondence she recently received that made it seem as if the Student's suspension was not permanent—as it was her prior understanding that the Student was permanently suspended following the December 6, 2019 incident.

On February 13, 2020, the vice principal responded, stating, in part:

Well that letter was an emergency expulsion letter which is the right letter we are supposed to send to parents. However, if a school calls we can then tell them that it has been in our system converted to a short-term suspension.

27. According to emails included in the LEA's response, from mid-February 2020 through early March 2020, the Student's family members, including the Complainant, were attempting to enroll the Student in a different school district.
28. The LEA's response included a statement signed by the LEA's vice principal, dated March 3, 2020. It read:
- On December 6, 2019, Student was placed on an emergency expulsion to which it was converted to a short-term suspension on December 20, 2019 in our system.
- Parents and guardians [of the Student] discussed on December 6, 2019 that they would be looking into vocational programs to help Student with the transition of being an adult student.
29. The LEA's last regular, in-person day of instruction, prior to the COVID-19 facility closures, was March 16, 2020.
30. According to the LEA, the Student did "not have a behavioral intervention plan [developed] from a functional behavior assessment" at any point during the 2019-2020 school year. In response to a question from the OSPI investigator, the LEA stated that "given the timing of the incident and winter break, the intent was to convene an IEP meeting in January to determine next steps for the Student."

There is no documentation that an IEP meeting was scheduled or held in January 2020.

31. During the course of this investigation, the LEA confirmed the following facts:
- The Student did not return to the LEA after the December 6, 2019.
 - The LEA did not complete a manifestation determination related to the December 6, 2019 incident.

32. During the course of this investigation, OSPI asked the LEA the following question and received the following answer:

To confirm, the LEA did not provide the Student with any services after he was expelled/suspended on December 6, 2019, correct?

INCORRECT- Services were available along with schoolwork. The week of Dec. 16-20 are half days.

33. At OSPI's request, as part of this investigation, the principal provided the following statement regarding his perception of the Student's behavioral and/or mental health needs during the fall 2019 semester:

Student has been at [LEA] the entire time I have worked here. He generally has had stable social emotional needs during this time...Student does seek out adults that he is comfortable with for support. He also has a few very close friends. He participates in class and asks questions.

His needs during the 19-20 school year didn't change. There are adults that he checked in with regularly and vice versa. His behavior and social/ emotional needs did not get better or worse.

34. At OSPI's request, as part of this investigation, one of the Student's teachers provided the following statement regarding his perception of the Student's behavioral and/or mental health needs during the fall 2019 semester:

The Student had mostly stable behavior when in my class and when I would see him around the school. There would be days where he seemed frustrated but when I asked how he was doing he would not share much other than people were frustrating him. During class when I checked for understanding he needed a little extra help but generally responded by completing the work I asked him to.

I would check in with him most days and his needs did not seem to change during his time with us during the 19-20 school year.

35. At OSPI's request, as part of this investigation, another of the Student's teachers provided the following statement regarding his perception of the Student's behavioral and/or mental health needs during the fall 2019 semester:

The student in question has had stable social/emotional needs since I have known him since 2015.

My interactions with him up until this school year were limited to conversations in the hallways, as he was not my student until this school year, but his actions around me were stable nonetheless. I have observed during this time that the student has always interacted pleasantly with adults and has had the same group of friends during this period.

This year I had the pleasure of having this student in class. He participated throughout the school year, and asked for help when he felt like he was struggling to work through projects himself. As the school year went on he began to turn in completed work at a higher frequency, to the point where by mid-November he was turning everything in fully completed for the days that he was in attendance at school.

I did not observe any changes to his behavior or social emotional needs during the 19-20 school year. He would routinely check in during class, and I would check in with him during this time. I recall one instance where he asked to see a counselor during November during my class instead of speaking with me about what was going on. It seemed as though he was really interested in doing well in school during my time with him this year.

CONCLUSIONS

Issue 1: Discipline Procedures – The Parent alleged the LEA did not follow special education discipline procedures in responding to the December 6, 2019 incident.

If an LEA removes a student for more than 10 consecutive school days for discipline reasons, the LEA must conduct a manifestation determination. With a manifestation determination, the LEA, parents, and other relevant members of the individualized education program (IEP) team (as determined by the parents and the LEA) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the LEA, parents, and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the LEA's failure to properly implement the student's IEP or behavioral intervention plan (BIP).

Here, for discipline reasons, the LEA removed the Student for more than 10 consecutive school days: the Student was emergency expelled on December 6, 2019 and on December 20, 2019, the Student's emergency expulsion was converted to a short-term suspension. According to the LEA, as a result of this conversion, the earliest the Student could have returned to his school was January 6, 2020.⁵ January 6, 2020 is more than 10 consecutive school days after December 6, 2019. Therefore, the LEA should have conducted a manifestation determination. The LEA did not, which represents a violation of the IDEA and certain LEA staff will be required to attend a training.

From there, the LEA should have proceeded down one of two paths, both of which are outlined in the special education regulations and in OSPI's 'Overview of Discipline Procedures for Students Receiving Special Education Services.'

Path A: Manifestation of the Student's Disability and/or LEA's Failure to Implement Student's IEP

If, as a result of the manifestation determination, the LEA, parents, and other relevant members of the IEP team determined the Student's actions on December 6, 2019 were either: 1) caused by, or had a direct and substantial relationship to, the Student's disability; or 2) the direct result of the

⁵ OSPI notes, though, that from the record, it is not clear the Student or the Complainant were told of the implications of the LEA changing the Student's emergency expulsion into a short-term suspension; in other words, the record does not clearly show the Student or the Complainant were told the Student could return to school on January 6, 2020. In fact, the Complainant stated that neither her, the Student, nor the Student's father, were told the LEA changed the emergency expulsion to a short-term suspension and that the Student could return on January 6, 2020.

LEA's failure to implement the Student's IEP, then the LEA would have needed to proceed down *Path A*.

Under *Path A*, the next step would have been for the LEA to determine whether a 'special circumstance' was present. A special circumstance is present if a student: (a) carries a weapon to or possesses a weapon at school; (b) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school; or (c) has inflicted serious bodily injury upon another person while at school.

Here, no special circumstance was present. For example, the Student appears to have alluded to retrieving a weapon from his backpack on December 6, 2019, there is no indication the Student actually brought a weapon to the school on that day. Similarly, there is no indication the Student inflicted serious bodily harm upon another person on December 6, 2019.

Therefore, under *Path A*, the LEA would have been required to take two actions:

1. The Student's IEP team would have been required to conduct a functional behavioral assessment (FBA)⁶ and implement a BIP⁷; or, if an FBA/BIP was already developed, then the Student's IEP team would have been required to review the BIP and modify it, as necessary, to address the challenging behavior; and,
2. The LEA would have been required to return the Student to his current placement, unless the Student and the LEA agreed to a change of placement to modify behavior.

Path B: Not a Manifestation of Disability and LEA Implemented Student's IEP

If, as a result of the manifestation determination, the LEA, parents, and other relevant members of the IEP team determined the Student's actions on December 6, 2019 were **not** either: 1) caused by, or had a direct and substantial relationship to, the Student's disability; or 2) the direct result of the LEA's failure to implement the Student's IEP, then the LEA would have needed to proceed down *Path B*.

As with *Path A*, the next step would have been for the LEA to determine whether 'special circumstances' existed. And, as shown above, in this case, 'special circumstances' were not present.

⁶ An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior.

⁷ A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

Therefore, under *Path B*, the LEA would have been able to apply the same disciplinary procedures as would be applied to nondisabled students. However, under *Path B*, the LEA would have been required to take three actions:

1. The LEA would have been required to provide services to the Student necessary for a free appropriate public education (FAPE), as determined by the Student's IEP team;
2. The Student's IEP team would have been required to determine the appropriate interim alternative educational setting (IAES) for the Student to receive services; and,
3. The IEP team should have considered conducting an FBA and/or reviewing the BIP to prevent the challenging behavior from reoccurring.

The fact that the LEA did not follow the appropriate steps for either *Path A* or *Path B* represents a violation of the IDEA, and certain LEA staff will be required to attend a training.

Compensatory Education

As detailed above, under either *Plan A* or *Plan B*, the LEA was required to provide the Student with certain services beginning on or about January 7, 2020—as January 7, 2020 represents the 11th day of school after the December 6, 2019 emergency expulsion/short term suspension. (Under *Path A*, the Student would have continued to receive the services outlined in his November 2019 IEP. Under *Path B*, the Student would have received those services his IEP team determined were necessary for the Student to receive FAPE.)

However, even before that date, the LEA would have had to provide some services to the Student. For example, while it is true that an LEA 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 less in that school year, if it provides services to a student without disabilities who is similarly removed, the general education regulations require that a student suspended for behavioral issues receive some services.

For example: an LEA may not suspend the provision of educational services to a student in response to behavioral violations. During the suspension, expulsion, or emergency expulsion of a student, an LEA 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 LEA; and (iii) Complete subject, grade-level, and graduation requirements. When providing a student the opportunity to receive educational services under this section, the LEA must consider: (i) Meaningful input from the student, parents, and the student's teachers; (ii) Whether the student's regular educational services include English language development services, special education, accommodations, and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and (iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services. As soon as reasonably possible after administering a suspension or expulsion, an LEA must provide written notice to the student and parents about the educational services the LEA will provide. The LEA must provide the written notice in person, by mail, or by email. The notice must include: (a) A description of the educational services that will be provided;

and (b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

Therefore, because the LEA provided the Student with no services after the December 6, 2019 incident, this represents a violation of the IDEA and the next step in the analysis is: is compensatory education needed?

Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the LEA's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed. There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.

Here, the progress reporting that was completed shows the Student made little-to-no progress in each area of specially designed instruction. For example, the October 24, 2019 progress report shows the Student had made the following progress on the measurable annual goals included in his November 2018 IEP:

- **Reading Comprehension:** Insufficient Progress
- **Math Calculation/Problem Solving:** Insufficient Progress
- **Adaptive Skill Development:** Insufficient Progress
- **Social/Emotional Skills:** Emerging Skill
- **Written Expression:** Emerging Skill

Therefore, it is likely the LEA's failure to follow proper discipline procedures, and the fact that it stopped providing services to the Student, negatively impacted the Student's ability to make progress on his IEP goals. Therefore, compensatory education is warranted.

December 9, 2020 through March 16, 2020 (the LEA's last day of regular, in-person instruction) represents approximately 12 weeks of school. Therefore, during this time, the Student should have received, approximately, the following amount of specially designed instruction:

- **Social/Emotional Skills:** 30 hours⁸
- **Reading Comprehension:** 45 hours⁹
- **Written Expression:** 45 hours
- **Math Calculation/Problem Solving:** 45 hours
- **Adaptive Skill Development:** 30 hours

Therefore, as compensatory education, the LEA will be required to provide the Student with approximately 1/3 of these missed hours:

⁸ 2.5 hours a week multiplied by 12 weeks equals 30 hours. (This is the same calculation required for the area of Adaptive Skill Development.)

⁹ Approximately 3.75 hours a week multiplied by 12 weeks equals 45 hours. (This is the same calculation required for the areas of written expression and math calculation/problem solving.)

- **Social/Emotional Skills:** 10 hours
- **Reading Comprehension:** 15 hours
- **Written Expression:** 15 hours
- **Math Calculation/Problem Solving:** 15 hours
- **Adaptive Skill Development:** 10 hours

These compensatory education hours will occur outside of the LEA's regular school day and may occur during periods when the LEA is on break. Due to the COVID-19 public health crisis, these hours of compensatory education may be provided to the Student remotely. The Student and the LEA's special education director can determine, together, whether these hours will be provided in a one-to-one setting—meaning just the Student and the service provider, or if other students can be included in these hours of compensatory instruction.

The 10 hours of compensatory education in social/emotional skills that are required as a result of Issue 1 will focus on the Student's social emotional goal in his November 2019 IEP, which deals with the Student's ability to manage feelings of anxiety, depression, and/or uncertainty.¹⁰

Issue 2: Implementation of Behavioral Intervention Plan (BIP) – While the Complainant alleged the LEA failed to implement the Student's BIP, according to the LEA, the Student did "not have a behavioral intervention plan [developed] from a functional behavior assessment" at any point during the 2019-2020 school year. Therefore, there was no BIP available for the LEA to implement. No violation is found.

Issue 3: IEP Development Procedures in the Fall of 2019 – The Complainant alleged the LEA did not follow proper IEP development procedures during the fall 2019 semester. Specifically, the Complainant alleged the LEA did not properly respond to the Student's changed needs in the area of behavior and mental health. 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.

Here, the record details the following information on the Student's behavior and mental health needs during the fall 2019 semester (and whether they changed during that time period):

- The Student's November 2018 IEP provided the Student with specially designed instruction in social/emotional skills because the Student demonstrated challenges in communicating with his peers.
- The October 2019 'Psycho-Evaluation' of the Student showed:
 - The Student was able to appropriately communicate with his peers in a small group setting, but the Student did not communicate as extensively with peers outside a small group setting.
 - The results of the Student's self-assessment were mixed.

¹⁰ Compare with the additional compensatory education in social emotional, which is required by Issue 2 below, and which will focus on the Student's ability to engage in peer communication.

- For example, on the one hand, the Student “fell within the average...range for a student Student’s age. He has a generally positive attitude toward school, does not experience anxiety, [and does not shown] problems with attention.”
 - On the other hand, the Student’s self-assessment showed the Student did report feeling “sad, misunderstood, and/or feeling that life [was] getting worse,” as well as concern over his relationships with family members and “uncertainty over the future, such as where he will live [and] if he will see his school friends again.”
- As of October 24, 2019, the Student had made the following progress on the social emotional goal included his November 2018 IEP: emerging skill.
- The Student’s November 2019 IEP provided the Student with the same amount of specially designed instruction in social emotional as was included in the November 2018 IEP. However, the goal area within social emotional changed; whereas the November 2018 IEP social emotional goal focused on increasing the Student’s ability to communicate with his peers, the November 2019 social emotional goal focused on increasing the Student’s ability to “access support from a trusted staff member” when feeling anxious, depressed, or uncertain.
- The ‘Present Levels’ portion of the Student’s November 2019 IEP states that, while the Student made progress on the social emotional goal in his November 2018 IEP, he “continues to be unable to meet...grade level expectations [regarding working on group-assigned tasks by engaging in conversation with his peers] and therefore requires specially designed instruction in the area of social behavioral skills.”
- According to the Complainant, throughout the fall of 2019, the Student was dealing with the illness and loss of his grandfather, which affected the Student deeply.¹¹
- The LEA’s ‘chronology of events’ related to the December 6, 2019 incident included the following statement: “Complainant suggested that Student is in desperate need of intense therapy...and [she] assured us that therapy would take place. We indicated that we would require a mental health/at-risk assessment before Student could return to school.”
- During the course of this investigation, three of the Student’s teachers submitted statements, wherein they asserted the Student’s behavior and mental health needs did not change significantly over the course of the fall 2019 semester.

On the foregoing facts, OSPI make two conclusions:

First, while the Student apparently made some progress on his November 2018 social emotional goal, which related to being able to communicate with his peers, the Student did not master this goal and still required specially designed instruction in this area. Then, in November 2019, the Student’s IEP team identified another area of need within the realm of social emotional: the ability to “access support from a trusted staff member” when feeling anxious, depressed, or uncertain.¹² The amount of specially designed instruction in social emotional remained the same in both IEPs. The Student’s IEP team did not add a new social emotional goal to the November 2019 IEP—so that both of the Student’s areas of need in social emotional could be worked on systematically. Rather, in November 2019, the Student’s IEP team simply replaced the November 2018 social

¹¹ The LEA’s ‘chronology of events’ related to the December 6, 2019 incident also mentioned the Student was affected by the loss of this twin brother.

¹² It is also worth noting that, at least initially, as a result of the December 6, 2019 incident, the LEA was going to require the Student to undergo a mental health assessment before being able to return to school.

emotional goal (dealing with communication) with a new goal (dealing with Student's ability to "access support" when feeling anxious, depressed, or uncertain). Therefore, it appears that, despite identifying two areas of need in the realm of social emotional, the Student's November 2019 IEP team did not ensure that both areas of need would be systemically worked on with the Student. Therefore, some compensatory education is warranted.

Here, November 5, 2019 (the date the new IEP was created for the Student) through March 16, 2020 (the LEA's last day of regular, in-person instruction) represents approximately 14 weeks of school.¹³ During this time, if the Student's November 2019 IEP team had ensured the Student continued to receive specially designed instruction in the area of 'social emotional—peer communication', it is reasonable to assume it would have been for roughly the same amount of time the November 2019 IEP devoted to 'social emotional—strategies for dealing with anxiety, depression, and/or uncertainty': 2.5 hours a week. Therefore, from November 5, 2019 through March 16, 2020, the Student should have received approximately 35 hours of specially designed instruction in 'social emotional—peer communication.'

The LEA will be required to provide the Student with approximately 1/3 of this time: 11 hours of specially designed instruction, in the specific areas of 'social emotional—peer communication.'

This compensatory education will be in addition to the compensatory education in social emotional required as a result of Issue 1 (see above).¹⁴ It will occur outside the LEA's regular school day and may occur during periods when the LEA is on break. Due to the COVID-19 public health crisis, these hours of compensatory education may be provided to the Student remotely. The Student and the LEA's special education director can determine, together, whether these hours will be provided in a one-to-one setting—meaning just the Student and the service provider, or if other students can be included in these 11 hours of instruction.

Second, the parent of a student with an IEP—or, an adult student with an IEP—must be provided progress reporting in order to fully participate in IEP development. Here, the LEA's response only included one progress reporting entry, which related to the November 2018 IEP and was dated October 24, 2019. From the record produced to OSPI—by both the LEA and the Complainant—there is no indication that the Complainant or Student was provided with a copy of the October 24, 2019 progress report. OSPI reminds the LEA that progress reports must be provided to adult students and/or the parents of students with IEPs in the form, and at the time, specified in the IEP.

Furthermore, the October 24, 2019 progress report only included general descriptors—for example, 'insufficient progress' and 'emerging skill.' OSPI recommends that the LEA write progress

¹³ This period of time actually represents approximately 16 weeks of school. But, if the two weeks of regular instruction (10 school days) that the LEA would have been permitted to remove the Student from school for the December 6, 2019 incident is subtracted, then the figure is actually approximately 14 weeks of school.

¹⁴ Again, the compensatory education in social emotional required as a result of Issue 1 will relate to the Student's ability to "access...trusted LEA staff" when Student is experiencing depression, anxiety, and/or uncertainty.

report entries in the same manner as the goal. So, for example, if the goal were to read, "When given a third grade level reading text, student will answer comprehensive questions improving ability to do so from 40% to 80%, as measured by teacher data," the best way to report progress on that goal would be: "As of [date], Student was able to answer comprehensive questions from a third grade level reading text 55% of the time, as measured by teacher data."

Issue 4: Student Participation in November 5, 2019 IEP Meeting – The Complainant alleged the LEA did not ensure the Student's participation in the November 5, 2019 IEP meeting.

All of the IDEA procedural safeguards, duties, and responsibilities transfer to a student at age eighteen. Adult students with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP. An LEA must take whatever action is necessary to ensure that the parent or adult student understands the proceedings of the IEP team meeting. Furthermore, a student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the LEA must take other steps to ensure that the student's preferences and interests for postsecondary goals and transition services are considered.

A meeting may be conducted without an adult student in attendance if the LEA is unable to convince the adult student 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 adult student and any responses received; and, (c) Detailed records of visits made to the adult student's home or place of employment and the results of those visits.

Here, the Student was eighteen years old as of November 5, 2019. Therefore, the LEA was required to invite the Student to the meeting and ensure his participation in the same.

During the course of this investigation, the LEA's special education director provided the following written statement to OSPI regarding the November 5, 2019 meeting: "We combined Student's re-evaluation and IEP meeting into one in November and invited Student to the meeting. Student's mom showed up after not having communicated anything about attending, and did not bring Student."¹⁵

Despite the fact the Student did not attend the November 5, 2019 meeting, the LEA documented two occasions during which it invited the Student to attend the November 5, 2019 meeting, and to which the Student said he would attend. Furthermore, both the November 5, 2019 evaluation, as well as the November 5, 2019 IEP, include multiple references to the Student's preferences and

¹⁵ This evidence comports with other evidence in the case. For example, during the course of the instant investigation, the Student did not specifically recall whether he attended, and participated in, a November 5, 2019 meeting. Furthermore, during this investigation, the Complainant provided a cover page for the November 2019 IEP that included certain individuals' signatures, and the Student's signature was not one of those included.

opinions—particularly in the areas of independent living/adaptive skills and postsecondary goals and transition services. Therefore, there has been no violation of the IDEA.

However, OSPI reminds the LEA that it must take whatever action is necessary to ensure that an adult student understands the proceedings of an IEP team meeting. So, in instances where the student has an intellectual disability that results in significantly below average general intellectual functioning, the LEA may have to take extra steps to ensure the student's ability to understand and participate in the IEP meeting.

CORRECTIVE ACTIONS

By or before **June 10, 2020, June 16, 2020, June 26, 2020, September 23, 2020, and October 16, 2020**, the LEA will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **June 12, 2020**, the LEA and the Complainant will develop a schedule for providing the following compensatory education to the Student:

- **Social/Emotional Skills:** 10 hours
 - This 10 hours will focus on the November 2019 IEP goal (which focused on Student's ability to manage feelings of anxiety, depression, and/or uncertainty).
- **Social/Emotional Skills:** 11 hours
 - This 11 hours will focus on the November 2018 IEP goal (which focused on Student's ability to communicate with peers).¹⁶
- **Reading Comprehension:** 15 hours
- **Written Expression:** 15 hours
- **Math Calculation/Problem Solving:** 15 hours
- **Adaptive Skill Development:** 10 hours

The LEA will provide OSPI with documentation of the schedule for services by or before **June 16, 2020**.

The compensatory education will be provided by a certificated special education teacher. The Student and the LEA's special education director can determine, together, whether these hours will be provided in a one-to-one setting—meaning just the Student and the service provider, or if other students can be included in these hours of compensatory instruction. The instruction will occur outside of the LEA's school day and may occur on weekends or during LEA breaks. Due to the COVID closures, these compensatory education hours be provided remotely.

If the LEA'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 LEA with at

¹⁶ No portion of the 10 hours in social/emotional (related to the November 2019 IEP) and the 11 hours in social/emotional (related to the November 2018 IEP) may be provided concurrently; they must be provided separately from one another—so the Student will receive a total of 21 hours of compensatory education in the area of social/emotional.

least 24 hours' notice of the absence, the LEA does not need to reschedule. *The services must be completed no later than **October 16, 2020**, including those needing to be rescheduled.*

No later than **October 16, 2020**, the LEA 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 LEA or missed by the Student.

The LEA either must provide the transportation necessary for the Student to access these services, or reimburse the Complainant for the cost of providing transportation for these services. If the LEA reimburses the Complainant for transportation, the LEA must provide reimbursement for round trip mileage at the LEA's privately-owned vehicle rate. The LEA must provide OSPI with documentation of compliance with this requirement by **October 16, 2020**.

LEA SPECIFIC:

The following LEA 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 2019-2020 school year. The training will cover the following topics:

- OSPI's 'Overview of Discipline Procedures for Students Receiving Special Education Services';
- Disciplinary Changes of Placement (WAC 392-172A-05155);
- Manifestation Determinations (WAC 392-172A-05146 through WAC 392-172A-05148);
- Discipline – Special Circumstances (WAC 392-172A-05149);
- Functional Behavior Assessments (WAC 392-172A-03015); and,
- Behavioral Intervention Plans (WAC 392-172A-01031).

The training will include examples. The training will not be presented by someone who is (or was) an employee of the LEA during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 101 staff in the creation of the training materials. If needed, due to COVID-19 related school closures, the LEA may choose to conduct this training via either zoom or skype.

By or before **June 10, 2020**, the LEA will notify OSPI of the name of the trainer and provide documentation that the LEA has provided the trainer with a copy of this decision for use in preparing the training materials.

By of before **June 26, 2020**, the LEA will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by July 6, 2020.

By **September 18, 2020**, the LEA will conduct the training regarding the topics raised in this complaint decision.

By **September 23, 2020**, the LEA 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 LEA 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.

RECOMMENDATION

OSPI recommends that the LEA write progress report entries in the same manner as the goal. So, for example, if the goal were to read, "When given a third grade level reading text, student will answer comprehensive questions improving ability to do so from 40% to 80%, as measured by teacher data," the best way to report progress on that goal would be: "As of [date], Student was able to answer comprehensive questions from a third grade level reading text 55% of the time, as measured by teacher data."

REMINDERS

An LEA must take whatever action is necessary to ensure that an adult student understands the proceedings of an IEP team meeting. So, in instances where the student has an intellectual disability that results in significantly below average general intellectual functioning, the LEA may have to take extra steps to ensure the student's ability to understand and participate in the IEP meeting.

Progress reports must be provided to adult students and/or the parents of students with IEPs in the form, and at the time, specified in the IEP.

Dated this ____ day of May, 2020

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