

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-77

PROCEDURAL HISTORY

On October 8, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Northshore 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 October 9, 2019, 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 November 12 and 18, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on November 13 and 26, 2019. OSPI invited the Parent to reply with any information she had by November 25, 2019.

On November 18 and November 19, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On November 19, 2019, OSPI received the requested information from the District and forwarded it to the Parent that same day.

On November 19, 2019, OSPI's investigator conducted a joint interview of the special education director – west region and the assistant superintendent.

On November 20, 2019, the District provided OSPI with additional information. OSPI forwarded this information to the Parent that same day.

On November 21, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On November 25, 2019, OSPI received the requested information from the District. OSPI forwarded this information to the Parent on November 26, 2019.

On November 21, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent. On December 2, 2019, OSPI received the requested information from the Parent. OSPI forwarded this information to the District on December 3, 2019.

On November 21 and November 22, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On November 25 and November 26, 2019, OSPI received the requested information from the District. OSPI forwarded this information to the Parent on November 26, 2019.

On November 25, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On November 26, 2019, OSPI received the

requested information from the District. OSPI forwarded this information to the Parent on December 3, 2019.

On November 26, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District that same day.

On November 30, 2019, OSPI received additional information from the Parent. OSPI forwarded this information to the District on December 3, 2019.

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 which occurred prior to the investigation time period, which began on October 9, 2018. 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 time period.

ISSUES

1. Did the District properly implement the Student's individualized education programs (IEPs) in effect since October 9, 2018?
2. Did the District follow proper reevaluation procedures for the Student's January 2019 reevaluation?¹
3. Did the District follow proper procedures in ending the Student's behavioral intervention plan (BIP) in or around February of 2019?

LEGAL STANDARDS

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 who is eligible to receive special education services. A school district must 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. Each school district must ensure the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy

¹ Upon further review of the Parent's complaint, the Parent's allegation on this point was two-fold: i) "the evaluation did not include assessments and historical data in all areas related to the Student's suspected disability, including health, social and emotional status, general intelligence, academic performance, and communicative status;" and, ii) "the evaluation does not use a variety of assessment tools and strategies to assist in determining the content of the Student's IEP."

between the services provided to a child with a disability and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). 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). 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. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

Missed IEP Services: In the situation "where the student is absent from school because of the family's or physician's decision that the student not attend school...the general rule is that, if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services." In the situation "where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel...the school district generally will be responsible for making alternative arrangements for providing IEP services." *Letter to Balkman*, 23 IDELR 646 (OSERS 1995), *explicitly reaffirmed by Letter to Copenhaver* (OSERS 2008).

Weather Closures and FAPE Implications: The IDEA and its implementing regulations do not specifically address a situation in which districts are closed or otherwise affected by a short-term weather incident. Generally, if the functioning or delivery of educational services is significantly disrupted for all or nearly all students due to an incident, then the district is not required to provide services to the affected students with disabilities during that same period of time that a school district is closed. *Letter to Pergament*, (OSEP 2013). However, weather closures do not excuse the district from fulfilling its ultimate responsibility to ensure that students eligible for special education services receive a free appropriate public education (FAPE). There may be some students for which the district needs to determine whether compensatory education is required. Districts are encouraged to consider the impact of the days missed on the student's progress and performance and determine how to ensure the continued provision of FAPE. Whether an interruption in services constitutes a denial of FAPE is an individual determination that must be made on a case-by-case basis. That is, the IEP team must determine whether the student was denied educational benefit because of the disruption in educational services and whether compensatory education is needed to "make up" for the denial including addressing any skills that may have been lost. OSPI, November 2019 Monthly Update, TIP.

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for

that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress", the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, " and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

Accommodations: Accommodations (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts

must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. 34 CFR §300.305(a); WAC 392-172A-03025.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student qualified for special education under the category of multiple disabilities, was in the tenth grade, and was enrolled part-time in both a District high school and a nonpublic agency (NPA).²
2. On February 12, 2018, the Student's IEP team created a new annual IEP for the Student and discontinued the Student's behavioral intervention plan (BIP).³
3. On March 9, 2018, the Student's IEP team amended the Student's February 2018 IEP. The Student's March 2018 Amended IEP included the following goals, generally:
 - **Social emotional:** Initiating requests for help when faced with "familiar and unfamiliar tasks."
 - **Adaptive 1:** Writing assignment details, including due dates, in an organizational planner.
 - **Adaptive 2:** Accurately filling out personal information on applications.
 - **Behavior:** Writing a problem-solving plan and sharing said plan with a trusted adult, when confronted with a "frustrating or confusing" situation.
 - **Math 1:** Math skills with dollar bills and change.
 - **Math 2:** Ability to complete 3-digit subtraction problems.
 - **Math 3:** Ability to complete "two-step story problems involving addition and subtraction."
 - **Reading 1:** Demonstration of sixth grade level reading comprehension skills.
 - **Reading 2:** Improving understanding ("reading fluency") of sixth grade level written passages.
 - **Written language 1:** Ability to properly organize and compose a "three paragraph paper."
 - **Written language 2:** Ability to correctly spell words with "common phonetic rules."

² On January 31, 2017, the Student's individualized education program (IEP) team determined that a nonpublic agency (NPA) could best provide some of the Student's IEP services; starting on that date, the Student received some of her IEP services at an NPA and some of her IEP services at the District high school. According to the District, the District pays for the total cost of the Student's part-time attendance at the NPA.

³ According to a February 13, 2018 prior written notice, the Student's IEP team discontinued the BIP "because Student has not shown behavioral need for the plan this year."

- **Communication 1:** Ability to “infer and explain the meaning” of unknown words.
- **Communication 2:** Ability to retell a story that has been audibly presented, including the recalling of “four critical events” from the story.

The March 2018 Amended IEP provided the Student with the following specially designed instruction in a *special education setting* from March 9, 2018 through February 15, 2019:

- Communication: 40 minutes once a week (to be provided by a speech language pathologist (SLP))
- Written language: 60 minutes 5 times a week (to be provided by special education staff)
- Math: 60 minutes 5 times a week (to be provided by special education staff)
- Reading: 60 minutes 5 times a week (to be provided by special education staff)
- Social Emotional: 20 minutes 5 times a week (to be provided by special education staff)
- Adaptive: 20 minutes 5 times a week (to be provided by special education staff)
- Behavior: 25 minutes once a week (to be provided by special education staff)⁴

The March 2018 Amended IEP provided the Student with the following supplementary aids and services in a *special education setting* from March 9, 2018 through February 15, 2019:

- Mental Health Specialist: 50 minutes once a week (to be provided by a therapist)^{5 6}

The March 2018 Amended IEP provided the Student with the following postsecondary goals and transition services:

- Education/Training: Upon leaving public school, Student will attend post-secondary education at either a 2-year, 4-year, or vocational school.
 - Transition Services: During this IEP year, Student will research educational opportunities beyond high school (responsible staff: special education teacher).
- Employment: Upon leaving public school, Student will engage in part-time or full-time employment working with animals.
 - Transition Services: During this IEP year, Student will investigate educational and employment opportunities in the field of veterinary care (responsible staff: career specialist).

The March 2018 Amended IEP provided the Student with the following accommodations and modification on a daily basis:

Accommodation	Location
Access to a computer for writing.	General education and special education classroom.

⁴ According to the District, the Student received the following specially designed instruction at the NPA: written language; math; reading; social emotional; adaptive; and, behavior. The Student received her other services at the District high school.

⁵ The District said that the following skills and exercises were worked on during the mental health therapy sessions: “cognitive behavioral therapy (connecting feeling/thoughts/emotions) and mindfulness training (breathing/self-soothing/relaxation techniques).”

⁶ According to the March 2018 Amended IEP, the Student’s specially designed instruction and supplementary aid and service were not meant to be provided concurrently (meaning all instruction areas were to be provided separately, and the supplementary aid and service was not to be provided at the same time as any of the specially designed instruction).

Additional time for assignments.	General education and special education classroom.
Additional time for tests.	General education.
Change of location for tests.	General education and special education classroom.
Copy of class notes/outlines.	General education classroom.
Notebook/assignment organizer support.	Special education classroom.
Read-aloud – English.	General education and special education classroom.
Shortened assignments.	General education classroom.
Testing – presentation: human readers/cds.	General education and special education classroom.
Visual schedule.	General education and special education classroom.
Modification	
Modified grading.	General education classroom.

4. As of April 2018, the Student had made the following progress on the goals included in her March 2018 Amended IEP:

- **Social Emotional:** Sufficient Progress
- **Adaptive 1:** Emerging Skill
- **Adaptive 2:** Sufficient Progress
- **Behavior:** Sufficient Progress
- **Math 1:** Mastered
- **Math 2:** Emerging Skill
- **Math 3:** Emerging Skill
- **Reading 1:** Sufficient Progress
- **Reading 2:** Sufficient Progress
- **Written Language 1:** Emerging Skill
- **Written Language 2:** Sufficient Progress

5. As of June 2018, the Student had made the following progress on the goals included in her March 2018 Amended IEP:

- **Social Emotional:** Insufficient Progress
- **Adaptive 1:** Emerging Skill
- **Adaptive 2:** Insufficient Progress
- **Behavior:** Sufficient Progress
- **Math 2:** Insufficient Progress
- **Math 3:** Insufficient Progress
- **Reading 1:** Insufficient Progress
- **Reading 2:** Sufficient progress
- **Written Language 1:** Insufficient Progress
- **Written Language 2:** Sufficient Progress

Summer 2018

6. On August 30, 2018, District staff members created a 'high school plan' for the Student. The high school plan included: information on certain District staff members (their respective roles and when the Student will see them); a Parent communication plan; and the Student's daily schedule. The high school plan read, in part:

Student Communication: If Student feels anxious or upset she will: communicate with her teacher and get permission to leave class; come to the office foyer and write out her concerns; make an appointment with the appropriate staff; phone dad if she needs immediate support; return to class as soon as she makes an appointment with appropriate staff.

Student can email or text [the NPA] once a day. [The NPA] will respond to Student in person.

...

Student can email the special education teacher or the SLP once daily if she has questions about school work or speech class. They will respond to Student in person the next time they see her.

In its response to this complaint, the District appears to argue that the August 2018 'high school plan' was not intended to be part of the Student's March 2018 Amended IEP.

2018-2019 School Year

7. The District's 2018-2019 school year started on September 5, 2018. At the start of the 2018-2019 school year, the Student continued to qualify for special education under the category of multiple disabilities and was in the eleventh grade. The Student received special education services at both a District high school and the NPA.

For each period of time during which the Student's NPA schedule was unique—meaning: anytime the Student's NPA schedule changed, the District's response includes two different types of schedules. One type of schedule included: the start and end time of the Student's school day; the classes the Student took each day; and the total amount of time per week, divided by subject matter, of specially designed instruction the Student was scheduled to receive during each particular class. The other type of schedule included: the start and end time for each of the Student's classes; as well as how many days per week each class met.

OSPI has compiled the information from these two schedule types below. The bold portion of the below schedules represent when the Student's various classes actually met at the NPA. The portions in parentheses represent what specially designed instruction—subject matter and amount of time per subject matter, that the District asserts was provided during the Student's different classes at the NPA.

According to the District, from September 2018 through February 27, 2019, the Student attended the NPA from 11:00 am through 2:45 pm (schedule 1). Schedule 1 read, in part:

- **11:00 am – 12:00 pm (Tuesday – Friday):** Math (300 minutes of math; 20 minutes social emotional; 5 minutes behavior)
- **12:00 pm – 12:30 pm (Monday – Friday):** Life Skills (40 minutes social emotional; 5 minutes of behavior; 100 minutes adaptive)
- **12:30 pm – 1:00 pm (Monday – Friday):** Science (150 minutes reading; 5 minutes of behavior)
- **1:00 pm – 2:45 pm (Monday – Friday):**
 - **Language Arts** (300 minutes written language; 5 minutes behavior); and,
 - **History** (150 minutes reading; 40 minutes social emotional; 5 minutes behavior)

According to the District, at the NPA:

- "The Student is in a 1:1 environment; classes are comprised of the Student and the teacher."
- "There are no paraeducators at [the NPA]."
- "The teachers listed [on the schedules] provided the specially designed instruction. [The owner of the NPA] is the supervisor of [the] specially designed instruction for the Student."
- "2/4 of the teachers at [the NPA] had master's degrees in special education and certification."

8. In the course of this investigation, the Student's NPA math teacher, life skills teacher, and language arts and history teacher for the 2018-2019 school year all asserted they received a copy of the Student's March 2018 Amended IEP prior to serving the Student beginning October 9, 2018. In the course of this investigation, these individuals also provided OSPI with

detailed descriptions of the specially designed instruction that was provided in their respective courses from October 9, 2018 through February 26, 2019.⁷

9. According to the District, from September 2018 through January 2019, the Student met for twenty minutes each week with the District special education teacher. During these meetings, the Student and the special education teacher worked on the following topics: work from the Student's life skills class; work from choir; preparation for the WA-AIM; English language arts and math instruction; instruction on the Student's use of a school computer; and "transition surveys (work preferences, Picture Interest Survey, strength survey, etc.)."
10. According to the SLP's record, in October 2018, the Student received 160 minutes of communication services and 40 minutes were scheduled but did not happen because the "Student [was] absent."
11. According to the District's mental health records, during the last three weeks of October 2018, the Student received three 50-minute mental health consultations.
12. On October 31, 2018, the Student's IEP team amended the Student's March 2018 Amended IEP. As explained in a prior written notice, dated November 7, 2018:
[On October 31, 2018], the IEP team agreed to have Student participate in WA-AIM testing [in the 2018-2019 school year] for high school diploma requirements...Parent asked that the [owner of the NPA] be able to speak to Student's case manager and give her recommendation. [This] conversation took place and [the owner of the NPA] approves of the WA-AIM testing and parents gave their consent via email.

The above amendment regarding the WA-AIM was the only change made to the Student's March 2018 Amended IEP on October 31, 2018.

13. According to the SLP's record, in November 2018, the Student received 160 minutes of communication services.
14. According to the District's mental health records, in November 2018, the Student received four 50-minute mental health consultations. One mental health session did not occur because it was scheduled to take place on Thanksgiving Day, when the District was not in session.
15. As of November 2018, the Student had made the following progress on the goals included in her March 2018 Amended IEP:
 - **Social Emotional:** Emerging Skill
 - **Adaptive 1:** Insufficient Progress
 - **Adaptive 2:** Sufficient Progress
 - **Behavior:** Insufficient Progress
 - **Math 2:** Emerging Skill
 - **Math 3:** Insufficient Progress
 - **Reading 1:** Mastered
 - **Reading 2:** Sufficient Progress
 - **Written Language 1:** Emerging Skill
 - **Written Language 2:** Sufficient Progress

⁷ The District's response included a general description of the specially designed instruction that the Student received at the NPA during the relevant time period. A copy of that description has been attached to this complaint as Exhibit A.

- **Communication 1:** Sufficient Progress
- **Communication 2:** Emerging Skill

16. According to the SLP's record, in December 2018, the Student received 100 minutes of communication services.

17. According to the District's mental health records, in December 2018, the Student received three 50-minute mental health consultations.

18. According to the SLP's record, in January 2019, the Student received 160 minutes of communication services and 20 minutes of communication services were missed because the "SLP [was] absent."

19. According to the District's mental health records, in January 2019, the Student received five 50-minute mental health consultations

20. As of January 2019, the Student had made the following progress on the goals included in her March 2018 Amended IEP:

- **Social Emotional:** Insufficient Progress
- **Adaptive 1:** Insufficient Progress
- **Adaptive 2:** Insufficient Progress
- **Behavior:** Insufficient Progress
- **Math 1:** Mastered
- **Math 2:** Insufficient Progress
- **Math 3:** Insufficient Progress
- **Reading 1:** Mastered
- **Reading 2:** Insufficient Progress
- **Written Language 1:** Mastered
- **Written Language 2:** Insufficient Progress
- **Communication 1:** Insufficient Progress
- **Communication 2:** Insufficient Progress

21. On January 9, 2019, school nurse emailed the Parent, stating, in part:

I am completing the health portion of your child's upcoming academic reevaluation. Part of that process involves a file review, but any updated information you can provide would be helpful, including updates from a health care provider. Please complete the attached Health Summary Worksheet and return when complete.

22. On January 11, 2019, the school nurse again emailed the Parent, requesting that the Parent, as part of the reevaluation process, submit to the District any pertinent health information on the Student.

23. On January 16, 2019, the District completed a reevaluation of the Student. The Student's evaluation group found the Student eligible for special education under the category of intellectual disability. As explained in the evaluation report:

Student historically has been noted to have the health impairment of [attention deficit, hyperactivity disorder (ADHD)], with the most recent diagnostic statement [dated] 2015. No current medical diagnostic determination has been provided as to the ongoing nature of any health impairment. However, Student's cognitive functioning and adaptive functioning deficits are inclusive of symptomatology that may be associated with ADHD. 'Intellectual Disabilities' is the most comprehensive and complete representation of Student's significant disabilities in regard to her access to the general education curriculum.

The January 2019 evaluation included assessments in the areas of:

- **Review of Existing Data:** Private psychological evaluation dated March 2011; District's 2013 reevaluation; private neuropsychological evaluation dated July 2014; District's 2016 reevaluation; state assessment data dated May 2016; English language proficiency assessment dated March 2017; historical grade data.
- **Medical-Physical:** Health summary dated January 2019; letter from private medical provider dated December 2015; letter from private medical provider dated October 2015; vision and hearing screening results.
- **General Education:** Classroom observations from Student's District-based independent living teacher, dated January 2019.
- **Social Emotional:** Progress the Student had made on one social emotional goal, as of November 2018; a Behavior Assessment System for Children – Second Edition (Teacher Rating Scale) dated 2013.⁸
- **Adaptive:** Adaptive behavior assessment system – 3rd edition, dated January 2019; progress the Student made on two adaptive goals, as of November 2018; observations of Student by SLP; private 2014 evaluation that utilized the Vineland II.
- **Behavior:** Progress the Student made on one behavior goal; results from the Behavior Assessment System for Children – 2nd edition, dated 2013.
- **Cognitive:** Results from the Wechsler Intelligence Scale for Children – 4th edition, dated November 2013; results from the Test of Nonverbal Intelligence – 3rd edition, dated November 2013; results from the Wechsler Intelligence Scale for Children – 4th edition, dated December 2010.
- **Academic:** Progress the Student made on seven different academic IEP goals; results from a privately-administered Woodcock Johnson Test of Achievement – 3rd edition and Wechsler Individual Achievement Test – 3rd edition, dated 2014; results from the Woodcock-Johnson III Tests of Achievement, dated November 2013; Smarter Balance assessment data from May 2016; results from the English language proficiency assessment, dated March 2017.
- **Communication:** Results from the Oral and Written Language Scales – 2nd edition, dated November 2018; results from subtests of the Comprehensive Assessment of Spoken Language – 2nd edition, dated November 2018; SLP observations of the Student, dated November 2018; input from one of the Student's providers at the NPA.
- **Observations:** Observations of the Student from the following individuals: special education teacher; school psychologist; mental health specialists; a teacher from the NPA.
- **Age Appropriate Transition Assessment:** Results from a Unique Learning System Vocational/Employability survey, dated January 2019; notes on a conversation the special education teacher had with the Student concerning her job interests, dated January 2019.⁹
- **Adaptive Pre-Vocational:** "Anecdotal teacher feedback data."¹⁰

⁸ The social emotional portion of the January 2019 reevaluation also expressly incorporated a portion of the adaptive section of the January 2019 reevaluation: "Current social skills assessment utilized the Adaptive Behavior Assessment System – Third Edition [and] data is reported in the adaptive section of this report."

⁹ The Age Appropriate Transition Assessment portion of the January 2019 evaluation notes the District attempted to administer the Picture Inventory Career Survey and Unique Learning System Work Employment Preference Survey, but "the Student refused to attend the scheduled weekly meeting with [the necessary] IEP providers."

¹⁰ The Adaptive Pre-Vocational portion of the January 2019 evaluation incorporates, by reference, the adaptive portion of the same evaluation.

The general education portion of the January 2019 reevaluation read, in part:

Student participates in two general education courses at the District high school: chorus and independent living. Both classes have special education-modified curriculum and grad[ing].

Independent Living Teacher Report: She completes [the work she's assigned in her independent living class] with the [NPA]. [An individual] took notes for Student and sent them off to the special education teacher. I had her sitting up front in the class. She wanted to be placed in the back of the room though. I accept all late work and extra time for tests. All tests and homework appear to get completed with [the NPA]. When I have tried to help her with in-class work and where to get started, she ends up just sitting there...usually on her phone. I'm not sure if she really doesn't understand the material or just wants [the NPA] to help her with it.

The academic portion of the January 2019 reevaluation concluded: "The Student continues to demonstrate the need for specially-designed instruction in functional academics."

The social emotional portion of the January 2019 reevaluation mentioned the progress the Student made on one social emotional goal, as of November 2018. The referenced goal concerned the Student's ability to initiate requests for help. The progress that was reported on this goal as of November 2018, as quoted in the January 2019 reevaluation, was as follows: "Progress by Q3: Student is still asking for help occasionally." The social emotional portion of the January 2019 reevaluation also mentioned the results of a 2013 behavior assessment, which found: "The primary area of concern noted in Student's social emotional assessment is seen in her social skills. She would benefit from specially designed instruction in how to make and keep friends, engage in prosocial behaviors, and handle conflict/disruptions to her routine."

The adaptive portion of the January 2019 reevaluation included the results of the ABAS – III. In part, the ABAS – III measures a student's capability in three domain areas: i) conceptual: behaviors needed to communicate with others, apply academic skills, and manage and accomplish tasks; ii) social: behaviors needed to engage in interpersonal interactions, act with social responsibility, and use leisure time; and iii) practical: behaviors needed to address personal and health needs, take care of home, classroom, or work settings, and function in a community. For the January 2019 reevaluation, the SLP, the Parent, and the owner of the NPA all filled out the ABAS – III for the Student. These individuals' responses for these domain areas were as follows: SLP ("extremely low range"); owner of the NPA ("extremely low to below average"); and Parent ("low to below average"). The SLP's responses "supported the finding that specially designed instruction in the adaptive area is inclusive of the following skills areas:" communication, functional academics, self-direction, social skills, and, school living. The Parent's responses supported a need for the Student in the following areas of adaptive: communication, self-direction, leisure skills, community use, home living, health and safety, and self-care. The owner of the NPA's responses supported a need for the Student in the following areas of adaptive: functional academics, self-direction, social skills, and school living.

The adaptive portion of the January 2019 reevaluation also included the progress the Student made on two of her adaptive goals as of November 2018. For the first goal, the Student appears to have made no progress: the goal pertained to the Student's ability to write assignment details and due dates in a planner and the January 2019 evaluation noted that "Student does not add her assignments to her planner." For the second goal, the Student appears to have made some progress; the goal pertained to the Student's ability to fill out an application, including her personal information and two references. The January 2019 evaluation notes: "Student filled out an online application and included [her personal information] but she did not include 2 references."

The behavior portion of the January 2019 reevaluation also included progress the Student made on a behavior goal, as of November 2018. The referenced goal referred to the Student's ability to "create a written plan to help solve [frustrating or confusing] situations and share it with a trusted adult." The January 2019 reevaluation notes that, as of November 2018:

Student has written in her journal 5 times this fall about situations with friends or classes...The journal is more of a recap of the situation, not a written plan for how to handle the situation. She has asked [a staff member] 1 time for help on how to handle the situation and what she should do.

The behavior portion of the January 2019 reevaluation also quoted a finding from a 2013-administered Behavior Assessment System for Children – Second Edition: "Student needs support in developing her organizational skills/study skills (examples, asking for clarification of directions, referring to earlier work, seeking out information when needed)."

The following individuals signed the January 2019 as evaluation team members: school psychologist, special education teacher, SLP, Parent, and school nurse.

The January 2019 evaluation recommended the Student receive specially designed instruction in adaptive and adaptive pre-vocational, with communication as a related service.

24. According to the SLP's record, in February 2019, the Student received 40 minutes of communication services.
25. According to the District's mental health records, in February 2019, the Student received two 50-minute mental health consultations. One additional session was scheduled but did not take place because the District was "closed due to snow."
26. The District was closed February 4 through 15, 2019 "due to snow."
27. The District was on mid-winter break February 18 through 22, 2019.
28. On February 26, 2019, the Student's IEP team developed a new annual IEP for the Student. The Student's February 2019 IEP included the following goals:
 - **Adaptive 1:** Ability to complete a list of non-preferred tasks.
 - **Adaptive 2:** Ability to independently fill out "personal data points" on applications.
 - **Adaptive 3:** Ability to communicate why she is having difficulty completing a particular task.

- **Adaptive 4:** Ability to balance a personal budget.
- **Adaptive 5:** Ability to communicate to the teacher, when she leaves the classroom because of anxiety challenges, where she will be going.
- **Adaptive 6:** Ability to use coping skills when confronted with “a situation that causes anxiety.”

The February 2019 IEP provided the Student with the following specially designed instruction in a *special education setting* from February 27, 2019 through February 26, 2020:

- Adaptive: 240 minutes 5 times a week (to be provided by special education classroom staff)
- Adaptive: 20 minutes once a week (to be provided by special education classroom staff)¹¹

The February 2019 IEP provided the Student with the following related services in a *special education setting* from February 27, 2019 through February 26, 2020:

- Communication: 40 minutes a week (to be provided by an SLP)
- Mental Health Specialist: 50 minutes once a week (to be provided by a therapist)

The February 2019 IEP provided the Student with the following postsecondary goals and transition services:

- Education/Training: Upon leaving public school, Student will attend post-secondary education at a vocational training program to work with animals.
 - Transition Services: During this IEP year, Student will investigate the requirements to attend the program as well as where the program is offered (responsible staff member: special education teacher).
- Employment: Upon leaving public school, Student will engage in part-time or full-time employment working with animals.
 - Transition Services: During this IEP year, Student will take classes that focus on completing applications, completing tasks, and working with other people (responsible staff member: special education teacher).

The February 2019 IEP provided the Student with the same modifications and accommodations listed in her earlier IEPs.

29. According to the District, from February 28, 2019 through June 2019, the Student attended the NPA from 11:00 am through 2:45 pm (schedule 2):

- **11:00 am – 12:00 pm (Tuesday – Friday):** Math (240 minutes adaptive)
- **12:00 pm – 12:30 pm (Monday – Friday):** Life Skills (240 minutes adaptive)
- **12:30 pm – 1:00 pm (Monday – Friday):** Science (240 minutes adaptive)
- **1:00 pm – 2:45 pm (Monday – Friday):**
 - **Language Arts** (240 minutes adaptive); and,
 - **History** (240 minutes adaptive)

30. In the course of this investigation, the Student’s NPA math teacher, life skills teacher, and language arts and history teacher for the 2018-2019 school year all asserted that they received a copy of the Student’s March 2018 Amended IEP prior to serving the Student beginning February 27, 2019. In the course of this investigation, these individuals also provided OSPI with

¹¹ Various documents in the District’s response refer to the “adaptive: 20 minutes once a week” as “adaptive: pre-vocational consultations.”

detailed descriptions of the specially designed instruction that was provided in their respective courses beginning February 27, 2019.

31. According to the District:

Starting in March 2019, directing after the February 2019 IEP meeting, Student stopped attending her weekly meetings with the special education teacher. Student would send emails the day of stating she did not want to come. Student did not attend for the entire months of March, April, and May. [During this time, the District made attempts to get the Student to start attending the weekly sessions with the special education teacher, but these attempts were not successful.] In June of 2019, Student starting attending...her case manager meetings again. [She attended a meeting with her case manager on] June 6, 2019 and June 13, 2019.

According to the District, during these weekly meetings with the special education teacher, the following specially designed instruction in the Student's February 2019 IEP was supposed to be provided to the Student: "Adaptive: 20 minutes once a week (to be provided by special education classroom staff)."

32. According to the SLP's records, in March 2019, the Student received 140 minutes of communication services and 20 minutes of communication services were missed because the "SLP [was] absent."

33. According to the District's mental health records, in March 2019, the Student received three 50-minute mental health consultations. One additional session was scheduled but did not take place because the "Student [was] absent."

34. According to the SLP's records, in April 2019, the Student received 140 minutes of communication services.

35. According to the District's mental health records, in April 2019, the Student received three 50-minute mental health consultations.

36. The District was on break from April 8 through 12, 2019.

37. As of April 2019, the Student had made "sufficient progress" on all her February 2019 IEP goals.

38. According to the SLP's records, in May 2019, the Student received 140 minutes of communication services. Two 20-minute communication sessions did not take place—one because the scheduled session fell on a federal holiday and one because the "SLP [was] absent."

39. According to the District's mental health records, in May 2019, the Student received four 50-minute mental health consultations. One more 50-minute mental health consultation was scheduled but did not take place because the mental health specialist was absent.

40. According to the SLP's records, in June 2019, the Student received 100 minutes of communication services.

41. According to the District's mental health records, in June 2019, the Student received three 50-minute mental health consultations.
42. As of June 2019, the Student had made the following progress on the goals included in her February 2019 IEP:
- **Adaptive 1:** Sufficient Progress
 - **Adaptive 2:** Emerging Skill
 - **Adaptive 3:** Sufficient Progress
 - **Adaptive 4:** Sufficient Progress
 - **Adaptive 5:** Sufficient Progress
 - **Adaptive 6:** Sufficient Progress
43. According to the District, it properly implemented the Student's IEPs, with the exception of the time period: "between February 26, 2019 and June 24, 2019. At the annual review 2/26/2019 IEP meeting, service time was increased by 15 minutes weekly but the increase did not get implemented until the fall of 2019. This resulted in a need to provide 19 hours of compensatory time."

2019-2020 School Year

44. The District's 2019-2020 school year started on September 4, 2019. During the 2019-2020 school year, the Student continued to qualify for special education under the category of intellectual disability and was in the twelfth grade. Student received IEP services at both a District high school and a NPA.
45. The Student's Monday through Friday schedule for the NPA for the 2019-2020 school year (schedule 3) was as follows:
- **10:00 am – 11:00 am:**
 - Math (240 minutes adaptive); and,
 - Occupational Education (240 minutes adaptive)
 - **11:00 am – 12:00 pm:** Science (240 minutes adaptive)
 - **12:00 pm – 1:00 pm:** Lunch and Independent Living (240 minutes adaptive)
 - **1:00 pm – 2:00 pm:** Language Arts (240 minutes adaptive)
46. In the course of this investigation, the Student's 2019 science teacher at the NPA (who was a new teacher for the Student that year) asserted that she was provided a copy of the Student's February 2019 IEP prior to serving the Student beginning September 4, 2019. In the course of this investigation, the Student's science teacher at the NPA also provided a detailed explanation of the specially designed instruction she provided to the Student in science class during the 2019-2020 school year.
47. According to the District, at the start of the 2019-2020 school year, the Student: never attended her general education PE class at the District high school; sometimes attended her weekly communication sessions with the SLP; and sometimes attended her weekly mental health therapy sessions. At some point relatively soon after the start of the 2019-2020 school year, though, the Student stopped attending the District high school for any of the services that were supposed to be provided to her at that location.

48. According to the District's response, and confirmed by documentation provided in response to the complaint:

An IEP amendment meeting was held on September 9, 2019 addressing several changes: changed course of study to reflect [an elective other than choir]; added the WA-AIM; changed SLP and mental health location to [the NPA]; removed all references to choir – specifically, the time of day that choir was offered [at the District school in 2019-2020 changed] and [impacted Student's ability to access] specially designed instruction at [the NPA].

49. The SLP's records state the following in terms of communication services offered to the Student in September 2019:

- **September 10, 2019:** "[I] offered services [but] family refused, stating desire to hold [IEP] meeting first."¹²
- **September 17, 2019:** Services provided at the NPA.
- **September 24, 2019:** Services provided at the NPA.

50. According to the mental health therapist, in September 2019, the Student received two 50-minute mental health consultations (on September 18 and 25).

51. According to the special education teacher's 2019-2020 schedule, in September 2019, she had two 20-minute consultations with the Student. In these two meetings, the following topics were addressed: welcome back survey; learning styles survey; how to fill out applications; specially designed instruction in "learning styles."

52. On September 27, 2019, the Parent emailed the director – south region and the director – west region, with two concerns with the January 2019 evaluation:

- **Concern 1:** The January 2019 evaluation did not include sufficient historical data on the Student.
- **Concern 2:** Services in social emotional and behavior were subsequently discontinued for the Student, in the February 2019 IEP, despite the fact that data from the January 2019 evaluation showed the Student had a need in this area.

53. The SLP's records state the following in terms of communication services offered to the Student in October 2019:

- **October 1:** "Offered services [but] family refused."¹³

¹² The District provided the following clarification on the SLP's use of the term "family refused" in her records: This language "means the SLP emailed the family (both Parent and Student) the day before the scheduled session reminding them of the appointment time. The SLP also included a brief summary of the plan for the session so that the Student would know what to expect. The Student and/or Parent would reply by email stating that the Student would not be attending the session. As such, the SLP did not travel to [the NPA] since the family had refused the services for that day."

¹³ The District stated that this language meant "the SLP emailed the family (both Parent and Student) the day before the scheduled session reminding them of the appointment time. The SLP [would] also include a brief summary of the plan for the session so the Student would know what to expect. The Student and/or the Parent would reply by email stating that the Student would not be attending the session. As such, the

- **October 8:** "Offered services [but] family refused."
- **October 15:** "Offered services [but] family refused."
- **October 22:** "Offered services [but] family refused."
- **October 29:** "Offered services [but] family refused."

54. The mental health therapist provided OSPI with the following information on mental health consultations the Student received in October 2019:

- **October 2:** "Student requested only a 30 minute session."
- **October 9:** One 50 minute consultation.
- **October 16:** One 50 minute consultation.
- **October 23:** "Student canceled."
- **October 30:** "The secondary mental health specialist canceled due to [an] accident on the way to the session."

55. According to the special education teacher's 2019-2020 schedule, in October 2019, she had five 20-minute consultations with the Student. In these five meetings, the following topics were addressed: how to complete applications; how to write a letter of application; and specially designed instruction in completing a resume.

56. As of November 2019, the Student had made the following progress on the goals included in her September 2019 Amended IEP:

- | | |
|--|--|
| • Adaptive 1: Sufficient Progress | • Adaptive 4: Mastered |
| • Adaptive 2: Emerging Skill | • Adaptive 5: Sufficient Progress |
| • Adaptive 3: Mastered | • Adaptive 6: Sufficient Progress |

57. According to the special education teacher's 2019-2020 schedule, in November 2019, she had three 20-minute consultations with the Student. In these three meetings, the following topics were addressed: assessing Student's ability to complete an application; employment environment survey; and employment preferences survey. One session was scheduled to take place during Thanksgiving Break, but this session did not take place because the District was not in session.

58. According to the District's response:

Student is currently choosing not to attend or access any classes or special education services at the District high school. This choice seems to be due to Student not getting the elective of choice. Other electives were offered to Student but were not accepted. Student is attending [the NPA] for four hours per day. District is continuing to work with the Parent and Student to [have the Student] return to the high school for services.

59. During the course of this investigation, the Parent submitted supplemental information that read, in part:

[The adaptive goals in the February 2019 IEP] do not address any of her needs in the area of coping in the real world in regards to socialization...All of Student's adaptive goals are

SLP did not travel to [the NPA] since the family had refused services for that day." The District's response includes several emails confirming the above-stated understanding of events as it relates to scheduled communication sessions in October 2019.

related to her intellectual disability...Though on paper Student has adaptive goals that appear to relate to social, emotional, and behavior needs, we do not feel they address her needs based on her anxiety and PTSD, and only on her intellectual disability...It is very clearly stated the importance of allowing students who have experienced trauma the opportunities to practice connecting with others. This is specifically the area that [Student] was not provided with...A critical task [that would be helpful for Student to work on would be] mastering the ability to establish positive peer relationships.

60. The Parent and the District have agreed to conduct a new evaluation of the Student. On November 7, 2019, the Parent signed a consent for reevaluation form for the Student, as well as an 'Authorization for Release of Records' related to the upcoming, agreed-upon reevaluation.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that, since October 9, 2018, the District did not properly implement the Student's individualized education programs (IEPs). A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP. Here, there were several components to the Student's IEPs.

Provision of Required Minutes of Specially Designed Instruction

October 9, 2018 through February 26, 2019

The Student's March 2018 Amended IEP required the following specially designed instruction be given, each week, during the above time period: social emotional (100 minutes); behavior (25 minutes); adaptive (100 minutes); reading (300 minutes); math (300 minutes); and written (300 minutes).

One copy of schedule 1 includes an assertion that, from October 9, 2018 through February 26, 2019, the above specially designed instruction was provided at the NPA each week, across the Student's various classes. This schedule, though, needs to be compared to the schedule that includes when the Student's classes at the NPA actually met. Such a comparison reveals whether the Student's schedule would have permitted her to receive the required specially designed instruction each week.

Life Skills Class

The schedule of when the Student's life skills class met would have permitted the following amount of specially designed instruction to be provided: 150 minutes a week; or 30 minutes a day.

The NPA asserts the following specially designed instruction was provided to the Student during her life skills class:

- Per week: 40 minutes social emotional; 5 minutes behavior; 100 minutes adaptive.
- Per day: 8 minutes social emotional; 1 minute behavior; 20 minutes adaptive.

Therefore, the Student's schedule for her life skills class would have permitted her to actually receive the specially designed instruction the District states was provided to her during the class.

Language Arts and History Class

The schedule of when the Student's language arts and history class met would have permitted the following amount of specially designed instruction to be provided: 525 minutes a week; or 105 minutes a day.

The NPA asserts the following specially designed instruction was provided to the Student during her language arts and history class:

- Per week: 300 minutes written; 150 minutes reading; 10 minutes behavior; 40 minutes social emotional.
- Per day: 60 minutes written; 30 minutes reading; 2 minutes behavior; 8 minutes social emotional.

Therefore, the Student's schedule for her language arts and history class would have permitted her to actually receive the specially designed instruction the District states was provided to her during the class.

Science Class

The schedule of when the Student's science class met would have permitted the following amount of specially designed instruction to be provided: 150 minutes a week; or 30 minutes a day.

The NPA asserts the following specially designed instruction was provided to the Student during her science class:

- Per week: 150 minutes reading; 5 minutes behavior.
- Per day: 30 minutes reading; 1 minute behavior.

The foregoing analysis reveals one minor issue: an impermissible concurrence of services. Based on the foregoing, the Student's schedule would have permitted her to receive 30 minutes of instruction in science class each week. During this same time, though, the District asserted that she received: 30 minutes of reading; and one minute of behavior. This means that, during this time, one minute of behavior was provided concurrent with specially designed instruction in reading. The March 2018 Amended IEP, though, stated all services are to be provided independently—in other words, not concurrently. However, given: a) the very small amount of time—one minute of behavior; and, b) the fact the Student received behavior instruction in each of her other classes during this time period, this represents only a minor failure to implement the March 2018 Amended IEP and no violation is found.

Math Class

The schedule of when the Student's math class met would have permitted the following amount of specially designed instruction to be provided: 240 minutes a week; or 60 minutes a day.

The NPA asserts the following specially designed instruction was provided to the Student during her math class:

- Per week: 300 minutes math; 20 minutes social emotional; 5 minutes behavior
- Per day: 75 minutes math; 5 minutes social emotional; 1.25 minutes behavior

The foregoing analysis reveals a problem: the Student's schedule provided her with 60 minutes to receive the following specially designed instruction: 75 minutes math; 5 minutes social emotional; and 1.25 minutes behavior. This means that, in effect, the Student was not provided 15 minutes of specially designed instruction in math each day. Also, before the creation of the Student's February 2019 IEP, the Student made insufficient progress on two of the math goals in her March 2018 Amended IEP. Therefore, the foregoing represents a material violation and compensatory education is warranted.

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. There is no requirement to provide day-for-day compensation for time missed. 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. Furthermore, whether a student has made progress on his or her annual goals is relevant to whether compensatory education is warranted, and, if so, how much compensatory education is warranted. For example, for a district to meet its substantive obligation under IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

Here, October 9, 2018 through February 26, 2019 represents approximately 15.5 weeks of school. As a reminder, during this time, the Student's math class met every Tuesday through Friday. So, for 4 days each of those 15.5 weeks, the Student missed 15 minutes of specially designed instruction in math, totaling 930 minutes. The District will be required to provide approximately 1/3 of this time as compensatory education: 300 minutes (5 hours).

February 27, 2019 through June 2019

According to one copy of schedule 2, the Student attended the NPA during this time for a total of 17.75 hours each week (or 1,065 minutes). During this same time, though, according to the February 2019 IEP, the Student was supposed to be receiving a total of 20 hours (or 1,200 minutes) of specially designed instruction in adaptive each week. This represents a discrepancy of 2.5 hours each week (or 150 minutes). This is a material violation and compensatory education is warranted.

February 27, 2019 through June 24, 2019 (the last day of school for the 2018-2019 school year) represents approximately 15 weeks. Therefore, during this time, the Student missed 37.5 hours of

specially designed instruction in adaptive. In its response, the District acknowledged its failure to properly implement the Student's IEP during this time period, and proposed providing the Student with 19 hours of specially designed instruction in adaptive to compensate for this failure. OSPI finds this offer equitable; the District will be required to provide the Student with 19 hours of specially designed instruction in adaptive to compensate for its failure to properly implement the Student's IEP from February 27, 2019 through June 2019.

Which of the Student's goals the compensatory education should focus on, though, presents a separate matter. The service matrix of the February 2019 IEP simply lists: "Adaptive: 240 minutes 5 times a week." The service matrix of the February 2019 IEP does not break out into subsets what types of adaptive specially designed instruction will be provided to the Student so as to enable her to make progress on her annual goals. Therefore, before providing the 19 hours of compensatory education in adaptive to the Student, her IEP team will meet to determine which goal, or goals, in her February 2019 IEP the compensatory education should focus on. (OSPI does note, though, that the Student appears to have made little progress on the following goal from February 27, 2019 through the present: adaptive 2—the Student appears to have made progress on her other adaptive goals during this time period.)

September 4, 2019 through Present

According to one copy of schedule 3, the Student attended the NPA during this time for a total of 20 hours each week (or 1,065 minutes). During this same time, according to the February 2019 IEP, the Student was supposed to be receiving a total of 20 hours of specially designed instruction in adaptive each week. Therefore, the Student's NPA schedule from September 4, 2019 through the present would have permitted her to receive the specially designed required by the February 2019 IEP.

One Remaining Portion of February 2019 IEP

The Student's February 2019 IEP also provided the Student with the following specially designed instruction: "adaptive: 20 minutes once a week (to be provided by special education classroom staff)." This was provided to the Student in weekly, 20 minute sessions with the special education teacher.

According to the District, the Student did not attend her weekly sessions with the special education teacher from March through May. In June 2019, the Student attended a 20-minute session with the special education teacher on June 6 and June 13, 2019. There were three weeks of school, though, in June 2019. Therefore, the Student should have had one more 20-minute adaptive session with the special education teacher.

In September 2019, the Student had two 20-minute adaptive sessions with the special education teacher. But there were four weeks of school in September 2019. Therefore, the Student should have received two more 20-minute adaptive sessions in September 2019.

In October 2019, the Student had five 20-minute adaptive sessions with the special education teacher. There were five weeks of school in October 2019, so the Student received what she was supposed to during this month.

In November 2019, the Student had three 20-minute consultations with the special education teacher. One session was scheduled to take place on Thanksgiving, but this session did not take place because the District was not in session. As all students did not receive services on the Thanksgiving holiday, the District is not required to make this session up.

In sum, from March 2019 through the present, the Student appears to have missed 60 minutes of specially designed instruction in adaptive. During this same time, the Student appears to have made progress on most of her February 2019 adaptive IEP goals. Therefore, the District will only be required to provide the Student with 20 minutes of compensatory education in adaptive. This 20 minutes will be added to the 19 hours of adaptive discussed above.

Speech

In the situation where the student is absent from school because of the family's or physician's decision that the student not attend school, the general rule is that, if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services. In the situation where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel, the school district generally will be responsible for making alternative arrangements for providing IEP services if the provider's absence negatively affects the student's ability to make progress on his or her IEP goals.

2018-2019 School Year

The March 2018 Amended IEP provided the Student with the following specially designed instruction in communication: 40 minutes once a week (to be provided by an SLP).

A review of the SLP's records for 2018-2019 shows that the District will be required to provide the Student with some compensatory education for the following missed sessions:

- 20 minutes: January 2019
 - There were approximately 4.5 weeks of school in January 2019, so that is 180 minutes. But Student was only provided with 160 minutes because a twenty minute session was canceled because the SLP was absent.
- 20 minutes: March 2019
 - There were approximately 4 weeks of school in January 2019, so that is 160 minutes. But Student was only provided with 140 minutes because a twenty minute session was canceled because the SLP was absent.
- 40 minutes: May 2019
 - There were approximately 4.5 weeks of school in May 2019, so that is 180 minutes. But Student was only provided with 140 minutes—two twenty minute sessions did not take place, one because it fell on a federal holiday and one because the SLP was absent.
- 20 minutes: June 2019

- There were approximately 3 weeks of school in June 2019, so that is 120 minutes. But Student was only provided with 100 minutes. The SLP's records do not include an explanation for why the Student did not receive the other 20 minutes.

Therefore, the Student missed 80 minutes of communication during this time period either because the provider was absent or because of an unknown reason (in other words, the record in this case did not reveal why certain sessions were missed). From November 2018 through January 2019, the Student did not make good progress on her communication goals (progress was either emerging or insufficient). From April through June 2019, the Student did make good progress on her two adaptive IEP goals that related to communication (goals 3 and 5); for this time period, the Student's progress on both of these goals was sufficient. Therefore, the District will only be required to provide the Student with approximately 1/3 of the total communication time missed in 2018-2019: 30 minutes.

2019-2020 School Year

The February 2019 IEP provided the Student with the following related service: communication: 40 minutes once a week (to be provided by an SLP).

For the month of September, the Student received two communication sessions on September 17 and 24, 2019, and one session, on September 10, 2019, was offered but "services [were] refused [because] family [wanted] to hold IEP meeting first." However, school started on September 4, 2019, meaning there were three and a half weeks of school in September 2019. Therefore, the Student should have received one more speech session—to account for the first half-week of school.

For the month of October, five communication sessions were scheduled but, according to the SLP, despite "services [being] offered...family refused." Under *Balkman*, the District is not required to make these services up to the Student.

For the 2019-2020 school year, then, the Student should have been provided with one additional 40 minute SLP session. However, as of November 2019, the Student had mastered or made sufficient progress on her two adaptive-communication goals. Therefore, no compensatory education is warranted for the 2019-2020 school year.

Mental Health Consultations

2018-2019 School Year

The March 2018 Amended IEP provided the Student with the following related service: mental health specialist: 50 minutes once a week (to be provided by a therapist).

From October 9, 2018 through the end of the 2018-2019 school year (June 24, 2019), there was only one 50-minute mental health sessions the Student should have been provided but was not: on May 30, 2019, the Student's scheduled weekly session did not occur because the mental health specialist was absent. Therefore, under *Balkman*, this session needs to be made up.

By way of explanation: the Student's adaptive goal 6 from her February 2019 IEP appears somewhat related to mental health—adaptive goal 6 pertained to the Student's ability to use coping skills when confronted with "a situation that causes anxiety," but, from the record, it is not clear that the mental health specialist's services, as written in the February 2019 IEP, were specifically included for the sole purpose of working on adaptive goal 6. For example, the District said that the following skills and exercises were worked on during the mental health therapy sessions: "cognitive behavioral therapy (connecting feeling/thoughts/emotions) and mindfulness training (breathing/self-soothing/relaxation techniques)." The latter part of this description appears broader than the wording of adaptive goal 6. Therefore, the District will be required to provide minute-for-minute compensatory education for missed mental health therapy sessions.

2019-2020 School Year

The February 2019 IEP provided the Student with the following related service: mental health specialist: 50 minutes once a week (to be provided by a therapist).

According to the District, the Student received two mental health therapy sessions in September 2019 (on September 18 and 25). No other information on mental health therapy sessions in September 2019 was provided to OSPI. During this time period, though, the Student should have received four mental health therapy sessions.

According to the District, in October 2019: two mental health therapy sessions were provided; the Student canceled one session; the Student requested that one session be limited to thirty minutes; and one session was canceled by the provider because of an "accident on [the provider's] way to the session."

In sum, the District will be required to provide the Student with the following compensatory education, to make up for missed mental health therapy sessions that should have taken place but did not in both the 2018-2019 and 2019-2020 school years: four 50-minute mental health therapy sessions (or 200 minutes).

Transition Services

The documentation submitted in response to the investigation of this complaint shows that the District worked with the Student on numerous aspects of her postsecondary goals and transition services, including the following: "transition surveys (work preferences, Picture Interest Survey, strength survey, etc.);" work from the Student's life skills class; how to fill out applications; how to complete applications; how to write a letter of application; specially designed instruction in completing a resume; and assessing Student's ability to complete an application; employment environment survey; and employment preferences survey.

OSPI notes the following though: a part of the transition services portion of the February 2019 was more specific than the foregoing transition services offered to the Student. For example, the 'Education/Training' part of the transition services portion of the February 2019 IEP states that the Student was to identify a specific "vocational training program [wherein she would] work with

animals” and “investigate the requirements to attend the program.” There is no evidence that this was completed. In its response, the District explained that work on this portion of the February 2019 transition services was delayed because the Student stopped attending her weekly sessions with the special education teacher from March through May of 2019.

In light of the foregoing, during the provision of compensatory education, the District will be required to work with the Student on identifying a specific “vocational training program [wherein Student would] work with animals,” and “investigate the requirements to attend [that specific] program.”

August 2018 High School Plan

In its various responses to this complaint, the District appears to argue the August 2018 ‘high school plan’ was not intended to comprise part of the Student’s March 2018 Amended IEP. However, the August 2018 high school plan did include certain provisions that appear to represent accommodations related to the Student’s needs resulting from the Student’s disability.¹⁴ For example, the August 2018 high school plan stated the Student can, in certain circumstances, leave the class to write out her concerns and make an appointment with a staff member if she gets “anxious or upset.” And, the Student’s March 2018 Amended IEP and February 2019 IEP do not appear to include these options as accommodations. Therefore, OSPI recommends that, when the Student’s February 2019 IEP is revisited after the completion of the new evaluation for the Student, see below, that the Student’s IEP team discuss whether the Student needs the ‘high school plan’ as a result of her disabilities. If so, it needs to be added, in some form, to the accommodations section of her IEP.

Issue 2: Reevaluation Procedures – The Parent alleged the Student’s January 2019 reevaluation was defective in two regards.

The Parent first alleged “the evaluation did not include assessments and historical data in all areas related to the Student’s suspected disability, including health, social and emotional status, general intelligence, academic performance, and communicative status.”

Students should be comprehensively assessed in all areas of suspected disability. Additionally, as part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student.

Here, the January 2019 reevaluation included multiple assessments, and historical data, on each of the following areas: health, social and emotional status, general intelligence (“Cognitive”),

¹⁴ Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students.

academic performance, and communicative status. For this reason, OSPI finds no violation of the IDEA on this point.¹⁵

Next, the Parent alleged “the evaluation does not use a variety of assessment tools and strategies to assist in determining the content of the Student’s IEP.”

In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student’s IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student’s eligibility or disabling condition and/or determining the appropriate education program for a student.

Here, the January 2019 included, among other assessment tools, the following: teacher observations; the Student’s progress on recent annual goals; Adaptive Behavior Assessment System – 3rd Edition; Oral and Written Language Scales – 2nd Edition; and, the Unique Learning System Vocational/Employability Survey. On the basis of this, OSPI finds that the January 2019 reevaluation used a variety of assessment tools and strategies, and that there has been no violation of the IDEA on this point.

Issue 3: Ending the BIP in or around February 2019 – As a preliminary matter, the Student’s behavioral intervention plan (BIP) was discontinued in February 2018. OSPI can only look at potential violations of the IDEA within the past year. For the purposes of the instant decision, that date is: October 9, 2018. Therefore, OSPI cannot investigate whether the District improperly discontinued the Student’s BIP in February 2018. However, the Student’s IEP team did make a change to the social emotional and behavioral instruction the Student had been receiving in February 2019, which OSPI can address.

Despite the fact the February 2019 IEP service matrix and goals were all framed with the term “adaptive,” the Student did not stop receiving behavioral and social emotional support with the February 2019 IEP. For example, adaptive goals 3, 5, and 6 in the February 2019 IEP appear similar in nature to the social emotional goal in the Student’s March 2018 IEP. And adaptive goals 1, 2, 4, and 6 in the February 2019 IEP appear similar in nature to the behavior goal in the Student’s March 2018 IEP. In fact, when asked about the Parent’s concern on this point, as well as the comparison

¹⁵ In the course of this investigation, the Parent alleged the February 2019 IEP improperly failed to include adaptive goals related to socialization. See below, Issue 3. As a preliminary matter, this is an allegation SECC 19-77 was not opened on. The District and the Parent have agreed to an additional evaluation of the Student. The Parent’s reply stated, in part: “In regards to proper reevaluation procedures, the family and the District have agreed to move forward for an additional evaluation so [OSPI can] feel comfortable [that we have reached] resolution on that.” That having been said, OSPI notes that the social emotional portion of the January 2019 evaluation cites a 2013 behavioral assessment with approval, and that behavioral assessment noted: “The primary area of concern noted in Student’s social emotional assessment is seen in her social skills. She would benefit from specially designed instruction in how to make and keep friends.”

of the IEP goals mentioned above, the District stated, "It is the District's position that the Student's areas of identified need (**behavior, social emotional**, adaptive, and academics) were addressed under the adaptive umbrella" (emphasis added).

Over the course of the instant investigation, it has become apparent the Parent's true concern regarding social emotional and/or behavior services is in the content of the February 2019 IEP itself. Specifically, the Parent contends the February 2019 IEP should have included a goal related to socialization. This is an allegation regarding IEP development, and IEP development was not an issue OSPI opened the instant complaint on. That being said, OSPI notes the Parent and the District have agreed to reevaluate the Student. Subsequent to the completion of that evaluation, a new IEP will be developed for the Student. Therefore, OSPI recommends the parties consider the Student's need to improve peer socialization during both the evaluation process and/or any changes that are made to the Student's IEP as a result of the evaluation.

CORRECTIVE ACTIONS

By or before **January 8, 2020** and **March 27, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **January 8, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 5 hours of math; 19 hours and 20 minutes of adaptive; 30 minutes of communication; and 200 minutes of consultation with a mental health specialist.

For the 19 hours and 20 minutes of adaptive, the Student's IEP team will determine which of the Student's February 2019 IEP goals should be addressed during that time. Furthermore, at least a portion of the 19 hours and 20 minutes of adaptive must be devoted to the following: working with the Student on identifying a specific "vocational training program [wherein Student would] work with animals," and "investigate the requirements to attend [that specific] program."

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **March 27, 2020, including those needing to be rescheduled**. The District will provide OSPI with documentation of the schedule for services by or before **January 8, 2020**. The schedule will show which of the Student's February 2019 IEP goals will be worked on, and for how long.

No later than **March 27, 2020**, the District shall provide OSPI with documentation that all of the compensatory education have been completed. This documentation must include the dates, times, length of each session, which February 2019 IEP goals were worked on, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **March 27, 2020**.

DISTRICT SPECIFIC:

None.

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

RECOMMENDATIONS

OSPI recommends that, when the Student's February 2019 IEP is revisited after the completion of the new evaluation for the Student, that the Student's IEP team discuss whether the Student needs the 'high school plan' as a result of her disabilities. If so, it needs to be added, in some form, to the accommodations section of her IEP.

OSPI recommends the parties consider the Student's need to improve peer socialization during both the upcoming evaluation process and/or any changes that are made to the Student's IEP as a result of that process.

Dated this ___ day of December, 2019.

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 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.)