

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-105

PROCEDURAL HISTORY

On December 2, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Tenino 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 December 3, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On December 13, 2021, OSPI received additional information from the Parent. OSPI forwarded that information to the District on December 14, 2021.

On December 17, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on December 21, 2021. OSPI invited the Parent to reply.

On December 29, 2021, OSPI received additional information from the District. OSPI forwarded this information to the Parent on January 4, 2021.

On January 11, 2022, OSPI's investigator conducted a phone interview of the Parent.

On January 11, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on January 14, 2022. OSPI forwarded that information to the Parent the same day.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on December 3, 2020, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to December 3, 2020 is mentioned for informative, background purposes only.

ISSUES

1. During the 2021–2022 school year, did the District follow proper procedures for implementing those portions of the Student's individualized education program (IEP) that related to preventing elopement?
2. During the 2021–2022 school year, did the District follow proper IEP development procedures—specifically—did the Student's IEP team follow proper procedures to respond to any concerns the Parent had related to the Student's needs resulting from the Student's disability in the area of elopement?

3. Did the District follow proper restraint and isolation procedures on September 24, 2021?
4. Did the District follow proper IEP development procedures in or around April 2021—specifically—did the District properly consider whether the Student’s IEP needed to be amended as a result of the occupational therapist’s evaluation?¹

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 served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Each school district must ensure that 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 between the services provided to a [student with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student’s voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student’s freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

IEP Development: When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Basis for IEP Team Decisions: Generally speaking, an IEP team’s decisions must be based on a student’s needs resulting from that student’s disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student’s needs resulting from the student’s disability. *See, e.g.,* WAC 392-172A-03020(3)(g); *see also, generally,* WAC 392-172A-03090.

¹ Upon investigation of this issue, it was determined the occupational therapist’s evaluation was completed in December 2020, not April 2021.

FINDINGS OF FACT

2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services, was in the fourth grade, and attended a District elementary school.
2. The District’s response included an individualized education program (IEP) for the Student, dated September 24, 2020. The September 2020 IEP did not provide the Student with occupational therapy or services in motor skills as a related service.
3. On October 22, 2020, the Parent provided signed consent for the Student to be evaluated in the area of motor skills by the occupational therapist (OT).
4. The motor evaluation of the Student was completed on December 16, 2020 (December 2020 assessment revision). According to the assessment revision report, the OT conducted the assessment, which consisted of the following: a school function assessment; clinical observations; a record review; and, administration of the “Bruininks-Oseretsky Test of Motor Proficiency Second Edition” (BOT-2).

The December 2020 assessment revision read, in part:

Sensory Processing Measure:...In the area of Vision Student's score falls in the some problems range (i.e., becomes distracted by nearby visual stimuli) and on the Touch Scale Student's score is on the borderline between the Typical and Some Problems range. On this scale his occasional problems clustered in the over responsive category (i.e., distressed by accidental touch). On the Social Participation Scale Student shows some problems. Upon examination of individual item ratings for this area Student shows difficulty with handling frustration without outbursts, resolving peer conflict, and maintaining appropriate eye contact during conversation...An elevated score usually indicates significant problems in overall daily functioning. Student's score on the social participation scale appears to be elevated for reasons unrelated to sensory processing. Other factors that may have an impact on a child's ability with social participation include medical, developmental, cognitive, and environmental.

Clinical Observations:...Student is struggling with the ability to manage or regulate emotion and behaviors, inhibit negative responses, and delay gratification in ways considered socially appropriate for a given situation. This impacts Student's ability to focus and stay on task as well as develop positive interactions. Therapist has observed Student engage in the elopement behavior and negative verbal responses. When Student is upset, Student has a hard time calming.

...

Student presents with a dysfunctional pencil grasp, using a gross grasp which is at the 15-month age level. In typical grasp development, control of the writing utensil is refined as movement advances from the muscles of the forearm, to the wrist, and finally to the fingers. Children who do not hold their pencil correctly are sometimes using the wrong muscles to write. When writing, the thumb should be doing most of the work. In Student's case the thumb is not moving so it is not doing any of the work. He appears to be compensating by relying on his wrist and shoulder. This habit is generally gone by the end of kindergarten.

The problem with using larger muscles (whole arm and wrist) to write is that it is extremely tiring. In addition, using a dysfunctional grasp can impact legibility and pace of writing or the amount of writing someone can do before it becomes painful. Student would benefit from changing his pencil grasp to a more functional grasp; however, it is very hard to change a pencil grip after the second grade. To change the grasp Student must be willing and motivated.

...

BOT-2: Difficulty with fine motor integration and precision, [which Student has], affects a child's writing, organization on paper, and ability to transition between a worksheet or keyboard and other necessary information, which is in a book, on a number line, graph, chart, or computer screen.

Description of Educational Needs [and] Implications for Instruction: [Student struggles with emotional regulation but also has] motor [needs, including]: Dysfunctional grasp patterns that impedes written work.

The December 2020 assessment revision recommended the Student be provided with occupational therapy as a related service.

5. According to emails exchanged between District staff, the OT met with the Parent on December 16, 2020 to review the assessment revision.

6. According to the Parent:

[At some point after the OT completed her motor evaluation of the Student in December 2020], she then met with me [to discuss] her results. The OT was very upset to see [that] Student could not hold a pencil correctly and his handwriting was barely legible – resembling the handwriting of a kindergartner. The OT was confused why she was never asked to meet with him before and she told me that because so much time has gone by (Student has been in the District since the 1st grade) the window in development to correct the issue was already closed.

[The OT's assessment revision] was not added to his IEP until September 21, 2021 and was not acted on soon enough. When I met with the OT concerning the results she said he could get a [speech-to-text] accommodation for writing because Student can only write for a short period of time and his hand gets tired and sore resulting in him giving up on the activity. These accommodations were never considered, applied, or added to his IEP until [September 21, 2021].

In her interview with OSPI's investigator, the Parent also stated that in her December 16, 2020 meeting with the OT, the OT also recommended the IEP team consider providing the Student, in part, with the following: braille and a Chrome Book. According to the Parent, though: "None of these things ever happened."²

7. According to emails exchanged between District staff, as of January 27, 2021, the OT was unable to update the Student's IEP with his findings from the assessment revision because the Student had a behavioral intervention plan (BIP) document that needed "to be completed and

² Paraphrased from OSPI's investigator's interview with the Parent.

locked before [the OT] will be able to review the IEP to reflect updates made from the assessment revision.”

8. On February 5, 2021, a BIP and an amended IEP for the Student were created.

Based on the title page of the February 2021 amended IEP, it appears the following individuals attended the February 5, 2021 IEP meeting: special education teacher; Parent; general education teacher; and, District administrator.³

The February 2021 amended IEP read, in part

Student may benefit from speech-to-text for longer writing assignments...Student is not blind and does not have a visual impairment [and therefore does not require Braille].

...

Student’s autism significantly impacts his ability to problem-solve and find appropriate ways to express frustration and anxiety...In the spring of 2020 prior to the building closure due to COVID19, Student was spending his half-days in the [classroom] ^[4], receiving both general education and special education services. He was extremely successful in this setting, as the staff were able to implement many strategies such as breaks as needed, self-calming techniques, and more choice in activities than the structure of a regular general education classroom can provide...Within small setting of the [classroom] Student has been able to: Remain in expected location 90% of time, choose an acceptable break option, raise hand for acknowledgment and wait his turn to speak, focus on task at hand and complete classwork for up to 25 minute intervals.

...

Student worked hard during the occupational therapy evaluation. However, despite his best effort the handwriting tasks were very, very slow. Student 's dysfunctional grasp has a direct impact on producing written work.

Since Student is in a behavior support classroom, test results indicate that he does not need intervention for regulating his sensory system at school and is already participating in a social skills group direct occupational therapy services are not recommended for these areas. However, since Student is struggling with behavior regulation, task completion, producing written work and social participation secondary to poor self-regulation it is recommended occupational therapy provide consultation to help foster social and emotional learning development through targeted strategies, classroom-based programming, and accommodations and one-time monthly specially designed instruction to address the fine motor delay as well as classroom support.

The February 2021 amended IEP included the following measurable goals: **Social/Emotional/Behavior 1**: ability to identify stressor and appropriate emotional regulation technique; **Social/Emotional/Behavior 2**: ability to stay focused on academic

³ The District stated the special education teacher and the school psychologist do not recall if the OT attended the February 2021 IEP meeting.

⁴ In her interview with OSPI’s investigator, the Parent shared her understanding that the classroom is where different students with IEPs go to receive various services, as per their respective IEPs—similar to a resource room.

tasks; and, **Motor**: ability to hold a writing utensil with a functional grasp when completing writing assignments.

The February 2021 amended IEP included, in part, the following accommodations: breaks; shortened assignments; preferential seating; sensory breaks; take classroom test in separate location; and, speech-to-text. The IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Social/Emotional/Behavior**: 150 minutes a week (to be provided by special education staff)
- **Motor**: 30 minutes a month (to be provided by a certified OT assistant)

The February 2021 amended IEP provided the Student with the following related services in a *special education setting*:

- **Occupational Therapy**: 15 minutes a month (to be provided by special education staff)

The February 2021 BIP read, in part:

Student has recently become motivated to earn in school incentives...Student is very bright, though he has a low threshold for frustration in academic tasks. Student tends to fixate on things that he perceives has happened to him and has difficulty 'letting go' and with flexible thinking.

Target Behavior: coping with frustration. When given a frustrating or embarrassing situation, Student uses inappropriate strategies to cope, such as elopement, threats, or doing a preferred task instead (i.e., playing on phone/going on YouTube).

...

Intervention Strategies: request short break, practice mindfulness technique, choose to work in alternate setting, deep breathing...designate a place to take break/practice mindfulness technique/complete work and staff support to successfully move to this space and use these replacement behaviors...removing obstacles that may support target behaviors, such as access to cellphone, access to extraneous websites...social skills instruction to model and practice coping strategies, teaching mindfulness activities, social skills instruction focused on flexible thinking, graphic organizer to organize feelings and both positive and negative consequences.

...

Consequence Strategies: replacement behavior: points towards rewards (daily/short-term and long-term rewards). target: no points earned for that time segment in day, possibly no daily/short-term reward) use of reflection sheet.

...

De-escalation Plan: Escalation can be indicated by a variety of factors: non-preferred tasks, hyper-focus on task (preferred and/or non-preferred), engagement with peers, pacing, requesting frequent breaks and threatening are all indicators. When staff notice these behaviors, verbally identifying the 'noticings' to Student can help. Asking what staff can do to assist and/or encouraging a break that allows Student to have space also frequently help. Little to no verbal engagement with Student during an escalation is helpful. Verbal interactions may cause Student to further escalate/engage.

...

Crisis and Recovery Plan: If/when Student engages in non-dangerous behavior, give Student space and time to choose an alternative. Allow Student ample time to de-escalate prior to discussing consequences/retribution.

9. During this investigation, OSPI's investigator asked the District whether the special education teacher and/or the school psychologist⁵ recalled whether they had a copy of the OT's December 2020 assessment revision and reviewed the same, prior to the February 5, 2021 IEP meeting. The District responded with the following:

School psychologist: I do not recall; however, it was very much the OT's practice to call parents prior to any meeting she could not attend and to provide the team with any documentation.

Special education teacher: I recall the OT contacting the parent a few different times about OT-related things, but would not remember specifically when these phone calls were placed. I would assume one of the calls was about the report, as that was the OT's practice when she was unable to attend the meetings.

2021–2022 School Year

10. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of autism, was in the fifth grade, and attended a District elementary school. At that time, the Student's February 2021 amended IEP was in effect.
11. The District's first day of school was September 8, 2021.
12. The Student was enrolled in the following courses in the fall of 2021:
- Resource Room (*special education setting*)
 - Art (*general education setting*)
 - General Instruction (*general education setting*)
 - Music (*general education setting*)
 - Physical Education (*general education setting*)
13. According to the District, between September 8 and 24, 2021, the Student had access to a Chromebook as "all fifth graders were assigned a Chromebook and began using it the first week of School. Students accessed their Chromebook at school. [The Chromebooks] did not go home."
14. According to the OT's service log, the OT worked with the Student on September 15, 2021 for 30 minutes.
15. On September 21, 2021, the Student's IEP team met. According to the Parent:
[At this IEP meeting], several staff members were pushing to limit and take away some of Student's sensory breaks that he is allowed to have on an 'as needed' basis as stated in his IEP. I declined despite an immense amount of pressure from the school staff.
- These sensory breaks have helped Student be able to complete his schoolwork without eloping from school which is my main concern for his education. The [District members of the IEP team] said [eliminating the need for sensory breaks] would be a proposed goal to discuss in the future and [that] we would re-visit the issue at a later time.

⁵ Listed on the February 2021 IEP as the District administrator.

But the staff had already been limiting these sensory breaks despite what his IEP says. Student has reported that every time he goes into the special education classroom for a sensory break he is told to 'get back to class!' And/or 'you can't be in here; other kids are going to be in here!', but the classroom was empty.⁶

Student's IEP states Student spends 93% of his time in the general education classroom which is not a true statement...Student [has] difficulties [in the general education classroom] and is only able to stay [there for] a short time.

In her interview with OSPI's investigator, the Parent also provided the following recollections in relation to the September 21, 2021 IEP meeting: District staff wanted the Student to be required to let the teacher know that the Student was going to take a break and leave the classroom; and, the Student thought this would be an 'embarrassing' requirement, as the teacher would not stop the provision of a particular lesson and so the Student would be required to interrupt the teacher to state 'he needed to leave.'

According to the District:

[It was determined that] staff would present choices whenever possible and support the Student's use of breaks as requested. There was discussion as to if it was an appropriate time to start limiting breaks or defining the condition as to which breaks would be permitted. Parent requested that breaks remain as is. The IEP currently reflects the Student being allowed to take breaks as needed.

16. A new BIP was created for the Student on September 21, 2021. The September 2021 BIP included much of the same language as that found in the February 2021 BIP. The September 2021 BIP, though, did include the following new language:

Student has attended 4 of 8 school days this year. He began each day in the general education classroom and left 1 to 2 times per day to take a sensory break in the [special education classroom]. He is inconsistent with his ability to return to class after his break. The reasons he has reported leaving are: to finish breakfast, to have a snack, and conflict with his teacher (making a work demand).

...

Target Behavior: complying with adult directives.

17. On September 22, 2021, the general education teacher emailed the special education teacher, stating, in part, "I have made the break cards discussed in yesterday's...meeting and will [have them] laminate[d] this morning."

In its response, the District stated these "break cards" related to the Student's sensory breaks.

18. A new IEP for the Student was developed on or about September 21, 2021. The September 2021 IEP read, in part:

⁶ In her interview with OSPI's investigator, the Parent stated she suspected the reason District staff (allegedly) did not allow the Student access to the classroom for sensory breaks is because they are trying to encourage the Student to function in the general education classroom.

Student has made good progress in his social-emotional skills goals. He can recognize when he needs a break and requests breaks appropriately...Student has had limited time (approximate 6 hours) in the classroom in the first eight days of school due to absences and leaving the classroom. Academically, he has not completed any of the shortened assignments as noted in his behavior plan. I have explained this to him and have chosen assignments that would likely be successes for him but he refuses to do them. Behaviorally, he is generally non-compliant. When given a direction, Student will only sit and not follow it. Or, he will say what he wants, and states that he wants that first and then will follow the direction.

...

[Student met social/emotional goal 1 of the February 2021 amended IEP] in June 2021. [Student made some progress on social/emotional goal 2 in the February 2021 amended IEP].

Since beginning the school year on September 8, 2021, Student has been absent 4 of the 8 days. He has begun each day having breakfast with his peers and entering the general education classroom. He will also eat lunch and go to lunch recess with his peers. He has successfully asked for breaks in the [special education classroom] as needed, which are honored by the teacher. He has also received his accommodations for work from his teacher, and consistency with his current behavior plan. Student is successful in the [special education] setting when he is given directives, followed by his request of a preferred activity or break. Arguing or work refusal by student is met with a repeat of the directive (first/then) followed by disengagement. Student has left the classroom about 2 times per day he has attended for various reasons. Student has reported leaving for needing a snack/more breakfast, needing a break because it was "boring to listen to a teacher talk all morning", and because his teacher "is a jerk". Further discussion with Student clarified the last two reasons being linked to a modified work demand being made to Student followed by disengagement when Student refused or made his own demand (demand meaning statement of what someone wanted/expected).

Based on the progress Student has made in the [special education setting], next steps for his social emotional skills would be to work on following directives in the classroom, and using coping/sensory break strategies within the general education classroom setting (such as stepping out into the hallway, sitting at a designated space in the classroom with sensory tools).

...

He receives both direct and related...occupational therapy services once a month. Current [OT] (writer) has had the pleasure of working with Student on one occasion. Unfortunately, no previous data of Student's performance during 2020-2021 [occupational therapy] sessions is available for current OT (writer) to review. However, during one [occupational therapy] session this school year Student was observed to utilize a nonfunctional pencil grasp while copying two sentences from near point. Student was observed to tuck the pencil between his index and middle fingers with limited wrist extension. He benefited from verbal cues to print on the line and use proper spacing between words affecting legibility. Student was also observed to print letters with incorrect formation, he was observed to frequently print bottom to top and left to right which limit's his handwriting legibility. Also, per most recent [occupational therapy] evaluation Student demonstrated the most difficulty with starting point, sequence, and orientation of letters during handwriting.

The September 2021 IEP provided the Student, in part, with the following measurable goals: **social/emotional/behavior 1**: ability to use a coping strategy to return to a task/directive in the general education setting; **social/emotional/behavior 2**: ability to stay focused on academic tasks and directives; and, **motor**: ability to check written work for baseline adherence, appropriate spacing between words and letters, capitalization, punctuation, and same size letters, improving legibility.

The accommodations in the September 2021 IEP closely mirrored those in the February 2021 amended IEP, including, in part, the following: "pencil grippers, adapted writing utensils, adapted paper, and slant board." The September 2021 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Social/Emotional/Behavior**: 100 minutes a week (to be provided by special education staff)
- **Motor**: 30 minutes a month (to be provided by a certified OT assistant)

The September 2021 IEP provided the Student with the following related services in a *special education setting*:

- **Occupational Therapy**: 15 minutes a month (to be provided by special education staff)

The following individuals signed the September 2021 IEP: special education teacher; general education teacher; District administrator; OT; and, school psychologist. (The Parent and the school principal were listed on the title page of the September 2021 IEP, but they do not appear to have signed the same.)

19. According to the Parent, two incidences occurred on September 24, 2021:

[First], Student asked a question (in his general education classroom) about the lesson because he did not understand the directions for the assignment. The general education teacher then dragged Student out into the hallway on a chair and locked the door to the classroom so Student could not get back in.

[Second], Student eloped from school. I showed up to the school and Student was running around in a parking lot in front of the school completely unsupervised. He had been outside for close to 25 minutes at this time and I was never notified by the school staff. My...daughter who attends the middle school next door saw Student outside the school and took a picture of him and told me Student has ran away from school and [that I] need[ed] to get down [there].

The Parent stated she has "kept Student home since he ran away from school [and I am] waiting on other educational options for Student despite my many requests [for information from the District] by phone and email."

According to the District:

No isolation or restraint was conducted [on September 24, 2021]. At first, the Student was outside of the classroom on a break and supervised by the family-student support liaison. When the student left the building as a result of an undesired directive he was supervised, [in part], by...the principal.

...

On September 24th, 2021 at 8:43 am, the Student left the classroom for a walking break. At 8:46 am the Student returned to the classroom and reviewed with his special education teacher a list of coping strategies called 'can do's.' He was given a two minute time limit to return to class. He returned to the field between the elementary and middle school. The space is a large grassy fenced area where students are allowed to walk. According to the report from the school principal, Student was under direct supervision by the family-student support liaison for the entire time he was outside. The family-student support liaison requested assistance from the principal when the behavior appeared to be escalating. When the principal arrived, the Student was on the playground and in an escalated state ran toward the parking lot. The principal followed the Student and witnessed the Student get into a vehicle that his Parent was sitting in the back seat. The principal reported walking up to the car and speaking with Parent regarding the incident. At that time Parent requested a paper copy of his IEP. The principal invited Parent inside but she declined. The principal went inside and retrieved a copy of the IEP and provided it to her.

20. On September 24, 2021, the general education teacher emailed the Parent and the special education teacher, stating, in part, "I have little to report today. Student was in class for only a few minutes and then asked to take a break. I did not see him after that, and the principal came in a bit ago to tell me Student went home."

Later that evening, the Parent responded, stating, in part, "Ok, thank you. I appreciate the update and your input very much."

21. In its response, the District stated, "[The principal] stated [the Student did not experience] other incidences [of elopement prior to September 24, 2021]."

22. According to the District, it followed appropriate IEP development procedures in relation to the Student's needs resulting from the Student's disability around elopement. In particular, the District stated:

[After the incident on September 24, 2021], Parent contacted the assistant superintendent to communicate her concerns via a phone call. At that time, Parent shared [the] concerns she had regarding the IEP. Upon review, all areas of concerns brought forward by Parent had been addressed on the IEP through accommodations, with the exception of the request to review [a] safety protocol [for when the Student eloped], which would require the team to convene.

A meeting was scheduled to discuss concerns and a plan to address them October 7, 2021, to which Parent canceled due to illness. On October 11, 2021, I called to reschedule the meeting. We spoke on October 12, 2021 and determined we would meet on October 13, 2021. On October 13, 2021, Parent and I talked on the phone where she requested all further correspondence be via email.

On October 14, 2021, an email was sent to Parent outlining that the current IEP addressed pencil grasp, length of assignments/stamina, and breaks through the IEP accommodations. Through email it was [also] communicated [that] the IEP team needed to meet to discuss safety protocols when Student left the building [as well as] the minutes on the IEP. Parent

was reminded she has the right to request an IEP meeting at any time and shared with her a possible resource for conflict resolution.

23. According to the District, "an email was sent to Parent on November 4, 2021 informing her the school had prepared independent work and a Chrome book for the Student, which was not picked up."⁷

24. The District was on break November 25–26, 2021.

25. According to the District, "after no further communication [was received] from Parent, an attendance meeting was scheduled for December 8, 2021 at 1:00 pm, which Parent did not attend [n]or contact us prior to her no[t] attending."

26. The District's response included an undated letter from the principal to the assistant superintendent. The District stated this letter was written on December 13, 2021 and sent to the assistant superintendent on December 14, 2021. This letter read, in part:

On September 24th at approximately 8:55 AM I received a radio call from family-student support liaison that Student had left the building. Family-student support liaison was following him. Student was in the field area. He then moved to the...area at the...south end of the parking lot. Family-student support liaison and I were both outside and in radio contact. At this time we were implementing our response when students leave the building (elope). We kept eyes on him and told him he needed to return to the building in (1) minute or we would call parents.

Student was noncompliant and continued to move out of view. Family-student support liaison followed him. She contacted me on the radio and said that Student was in the parking lot. I told her to tell him he needed to return to school grounds or we would call the police. Family-student support liaison contacted me on the radio, stating that a car had pulled into the parking lot and that Student got in the back seat. By this time, approximately 9:05, I caught up with family-student support liaison.

Parent was in the passenger seat and a friend of hers was driving the car. Parent told me that Student had called his sister and that his sister contacted her. I asked why he left class and the school. Parent stated that Student was upset with his teacher. Parent requested a copy of the IEP. I asked her if she wanted to come into the building. She said no. I walked back up to the school.

The IEP was in an envelope on Student's desk along with a packet of seat work...I took the IEP to Parent in the car. She said she wanted to review the IEP. At this time, we were in the process of scheduling a meeting to address concerns regarding Student's IEP. I said we would address her concerns, including our response to elopement when we met to confer about the IEP.

[Our] safety protocol when students leave the building without permission:

1) Staff contacts the office and reports that a student has left the building.

⁷ The District's response included a copy of this email, and it appears to comport with the summary stated here. Notably, the Parent responded to the email, stating the reason she had not responded more quickly was because she was experiencing some personal health concerns.

- 2) The office contacts principal, a member of the behavior support team or the principal's designee responds. The behavior support team includes family-student support liaison, special education teacher, [and two paraeducators].
- 3) All members of the behavior team carry radios.
- 4) The student is located and staff supervise. Principal or designee coordinates response.
- 5) Staff implement a 'precision statement' and monitor the student's response.
- 6) Precision Statement: You are not being safe. You need to return to the building in one minute or we will call your parents. You have one minute starting now.
- 7) If the student is compliant, we return to the building and debrief. The student receives an office referral and parents are contacted.
- 8) If the student is noncompliant, parents are contacted. We continue to monitor the student and utilize precision statements or other strategies (encourage, confer, provide a reasonable incentive) until the student returns to the building. We do not require parents to come to school to pick the child up unless it is necessary after a long period of time and several attempts to have him return. The student receives an office referral and parents are contacted.
- 9) Disciplinary/Corrective responses include but are not limited recess detention, social skills, community services parent meetings, in-school suspension or out-of-school suspension.
- 10) Disciplinary/Corrective responses are modified according to a student's IEP or individual behavior plan.

27. The District was on break December 20–31, 2021.

28. In its response, the District stated, "The District is open to mediation. We are also open to working with outside support, for example a board certified behavior analyst to assist in evaluating the current IEP and BIP. Both options have been previously offered to Parent and rejected."

29. According to the District, the Student has not returned to school since September 24, 2021.

30. On January 11, 2022, OSPI's investigator conducted a phone interview of the Parent. OSPI's investigator's notes from that interview are as follows:

Student's Needs – Generally

Throughout the fall 2021 semester, 'Student was using a sensory break at least once each day.'⁸ 'It's important with Student's autism that he have choices with what to do – if he's just told to do something Student has challenges with this.'

Incident on September 24, 2021

After the day in question, Student told Parent that he had asked the general education teacher 'to repeat the direction because Student didn't understand.' Student thought perhaps the general education teacher thought Student was being sarcastic or difficult. Student told Parent that the general education teacher dragged the chair out of the classroom. The general education teacher came from behind the Student and dragged the chair into the hallway while Student was still sitting on it. The general education teacher then left Student in the hallway and locked the classroom door.

⁸ Single quotation marks represent paraphrasing.

Parent states Student was not tied or buckled to the chair – just sitting in the chair.

Parent is not clear what happened immediately after Student was left in hallway – Parent suspects this was when Student eloped, as it is Parent’s knowledge that the incident with the general education teacher preceded and/or instigated the elopement.

31. During this investigation, the Student’s general education teacher provided OSPI with the following written statement:

On September 24, Student was in class and was being disruptive. He received several redirects and directions to comply with expected behavior. He did not comply and continued to be distracting to other students in the class. He was seated at his assigned desk. Student was told that if he did not stop his chair would be moved into the hallway. He did not and his chair was pulled into the hallway, in front of the open classroom door. Student remained in the seat for approximately 1 minute. Student was not touched or held down. Student took a break without permission. The behavior response team was contacted.

...

[I cannot speak to, generally speaking, how often Student required sensory breaks] because the Student was only in my room for a few hours total.

32. During this investigation, the special education teacher provided OSPI with the following written statement:

The Student requested and was provided with breaks multiple times a day...Prior to his IEP review on September 22, 2021, Student was provided sensory breaks in the [special education classroom] as needed. At his IEP review, the team determined next appropriate steps were to generalize his coping strategies into the general education classroom. Student was continued to be provided an opportunity to take sensory breaks, however the location changed to the TLC (targeted learning center). The [classroom] was no longer an appropriate place for sensory breaks due to needs of other students. The TLC provided a similar level of supervision/support/sensory materials. At his IEP meeting, it was also discussed that Student was using the...classroom as a place to escape work, and would not engage in sensory break activities, and he would refuse to re-engage in his classroom. Therefore, it was determined the TLC was a more appropriate break location, because it offered more structure and less distraction.

CONCLUSIONS

Issue 1: Implementation of IEP Elopement Provisions – The Parent alleged the District did not implement those portions of the Student’s individualized education program (IEP) that related to preventing the Student from eloping. Specifically, the Parent stated the Student was not provided with the sensory breaks included in the Student’s IEP.

A district must also 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 child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

Here, both the February 2021 and September 2021 IEPs provided the Student, in part, with the accommodation of sensory breaks. From September 8–24, 2021, though, the Parent stated the Student was not provided sensory breaks. The Parent stated whenever the Student attempted to take a break in the special education classroom, the Student would be “told to ‘get back to class’ and/or ‘you can’t be in here [because] other kids are going to be in here’ [even though] the classroom was empty.”

This investigation did show that at least some members of the Student’s IEP team believed a reasonable goal for the Student was to reduce the frequency with which the Student utilized sensory breaks. For example, the February 2021 IEP read, in part:

Based on the progress Student has made in the *special education setting*, next steps for his social emotional skills would be...using coping/sensory break strategies within the general education classroom (such as stepping out into the hallway, sitting at a designated space in the classroom with sensory tools).

And the special education teacher stated, “At [the September 2021] IEP meeting, it was...discussed that Student was using the...classroom as a place to escape work, and would not engage in sensory break activities, and he would refuse to re-engage in his classroom.”

Despite an expression by some of the IEP team members that a reasonable goal for the Student would be to decrease his utilization of sensory breaks in the special education setting, this investigation did not show there was a material failure to implement this accommodation. For example: the September 2021 behavioral intervention plan (BIP) stated the Student “left [the general education classroom] 1 to 2 times per day [during fall 2021] to take a sensory break in the [special education classroom]”; the September 2021 IEP read, in part, the Student “has successfully asked for breaks in the [special education classroom] as needed, which are honored by the teacher”; and, in the Parent’s interview with OSPI’s investigator, the Parent stated the Student used a sensory break at least once each day. Therefore, OSPI finds the District did not fail to materially implement this provision of the IEP.

It appears there were two changes made to the Student’s use of sensory breaks on or about September 22 or 23, 2021. For example, according to both emails and the District’s narrative response to this complaint, a laminated “break card” system began to be utilized on or about these dates. Additionally, according to the special education teacher, on or about these dates, the Student continued to be provided an opportunity to take sensory breaks; however, the location changed. These changes did not prohibit implementation of the IEP. No violation was identified.

As the Student has not returned to school following the incident on September 24, 2021, and as the Parent has expressed that the Parent’s principal concern around elopement is the Student being provided sensory breaks, OSPI recommends the District communicate to the Parent that: (1) in accordance with the September 2021 IEP, should the Student return to school, the Student will be provided with sensory breaks; and, (2) the details on how the Student will use sensory breaks—for example—will laminated “break cards” be used? How will the Student request a sensory break? And which location will the Student take the sensory break in? It is also recommended that the District assure the Parent every staff person working with the Student will

be made, to the extent they are not already aware of the same, of the procedures and practices related to the Student's use of sensory breaks.

Issue 2: IEP Development: Student's Elopement-Related Needs – The Parent alleged the District did not follow proper IEP development procedures during fall 2021 in responding to the Student's needs related to elopement.

When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability.

Here, it does not appear the Student's IEP team made changes to the Student's IEP and BIP in the fall of 2021 in *specific* response to any potential change in need related to *elopement*. For example, in part: the September 2021 BIP was substantially similar to the February 2021 BIP; the September 2021 IEP reduced by 50 minutes the amount of specially designed instruction in social emotional provided to the Student each week; and, the social emotional goals in the September 2021 IEP were similar in nature to the social emotional goals in the February 2021 IEP. Importantly, though, the information provided to OSPI during this investigation did not show there was a particular change in need related to elopement during the fall 2021 semester. For example, in its response, the District stated the only incident of elopement in fall 2021 took place on September 24, 2021. And, though the IEP did not implement any changes specific to elopement, it did implement changes related to the Student's social emotional needs, including, in part: revising the method by which the Student accesses sensory breaks, see above; adding an additional 'target behavior' to the Student's BIP on September 21, 2022; and, at least slightly revising social emotional goal 1 in the September 2021 IEP. Further, following the September 24, 2021 incident, the District made several attempts to schedule a meeting with the Parent. The Parent canceled one meeting and subsequently requested that further communication be via email. The District also indicated willingness to engage in mediation and bring in a board certified behavior analyst to help address the Student's needs, and that to date, the Parent has rejected these ideas. Therefore, there has been no violation of the IDEA on this point.

Still, in its response, the District stated it wishes to discuss a safety protocol with the Parent in the event the Student elopes in the future. OSPI recommends the District to continue to try and engage the Parent in setting up an IEP meeting to discuss creation of a safety protocol in the event the Student elopes in the future. OSPI further recommends the District and Parent consider utilizing a facilitated IEP meeting through Sound Options Group for this proposed IEP meeting.

Issue 3: Isolation and Restraint – The Parent alleged the District did not follow proper isolation and restraint procedures on September 24, 2021.

Isolation means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for

self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive BIP. Here, according to the information provided to OSPI during this investigation⁹, at no time on September 24, 2021 was the Student restricted, alone, to a particular room or other form of enclosure. Rather, on the morning of September 24, 2021, the general education teacher moved the Student, see below, into the hallway. From the hallway, the Student had freedom of movement—as the Student subsequently eloped to outside the school building. Therefore, no isolation of the Student occurred on September 24, 2021 and no IDEA violation is found.

Restraint means physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. Here, on the morning of September 24, 2021, the general education teacher dragged the Student's chair into the hallway. According to the Parent, the Student was not tied or buckled to the chair. According to the general education teacher, the Student was "not touched or held down." Accordingly, based on the information provided to OSPI during this investigation, no restraint of the Student took place, and there was no violation of the IDEA.

Issue 4: IEP Development: Occupational Therapy Assessment – The Parent alleged the District did not follow proper IEP development procedures—specifically—that the District did not properly consider the results of the occupational therapist's (OT) assessment revision in developing the Student's subsequent IEP.

During this investigation, it was shown that the OT's evaluation was completed in December 2020—not April 2021—as initially alleged by the Parent. Here, for two reasons, the Students February 2021 IEP properly considered the results of the OT's December 2020 assessment revision. First, the February 2021 IEP explicitly mentions the OT's December 2020 assessment revision: "Student worked hard during [the December 2020] occupational therapy evaluation." Second, the February 2021 IEP incorporated at least two of the recommendations from the December 2020 assessment revision. For example, the December 2020 assessment revision recommended, in part, the Student be provided with occupational therapy as a related service and the accommodation of speech-to-text software. And both recommendations were adopted by the February 2021 IEP. Therefore, the Student's IEP team properly considered the results of the OT's December 2020 assessment revision in developing the February 2021 IEP, and no IDEA violation is found.^{10 11}

⁹ Principally: the Parent's complaint; the District's response; the principal's December 13, 2021 letter to the assistant superintendent; and, OSPI's investigator's notes from his interview with the Parent.

¹⁰ It is also relevant that the OT met with the Parent to discuss the results of the OT's assessment revision on December 16, 2020.

¹¹ Upon investigating, it also appears the issue may have more been: whether the Student should have been administered an occupational therapy assessment prior to December 2020. For example, the Parent stated the OT expressed confusion as to "why she was never asked to meet Student before [December 2020] and...because so much time [had gone by] the window in development to correct the [pencil grip challenge] was already closed." But, in the community complaint process, OSPI can only investigate issues that took

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI recommends the District communicate to the Parent that: (1) in accordance with the September 2021 IEP, should the Student return to school, the Student will be provided with sensory breaks; and, (2) the details on how the Student will use sensory breaks—for example—will laminated “break cards” be used? How will the Student request a sensory break? And which location will the Student take the sensory break in? It is also recommended that the District assure the Parent every staff person working with the Student will be made, to the extent they are not already aware of the same, of the procedures and practices related to the Student’s use of sensory breaks.

OSPI recommends the District to continue to try and engage the Parent in setting up an IEP meeting to discuss creation of a safety protocol in the event the Student elopes in the future. OSPI further recommends the District and Parent consider utilizing a facilitated IEP meeting through Sound Options Group for this proposed IEP meeting.

Dated this ____ day of January, 2022

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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place in the year prior to the date the complaint was received by OSPI. Here, the complaint was received on December 2, 2021. So, whether the Student should have been administered an occupational therapy assessment prior to December 2020 is outside the permissible time period that can be investigated as part of the community complaint process.

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.)