

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-102

PROCEDURAL HISTORY

On September 1, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 2, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On September 19, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on September 26, 2022. OSPI invited the Parent to reply.

On October 5, 2022, OSPI received additional information from the District. OSPI forwarded that information to the Parent on October 10, 2022. OSPI invited the Parent to respond.

On October 7, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 10, 2022.

On October 19, 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 October 25, 2022. OSPI forwarded that information to the Parent on October 26, 2022.

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 September 2, 2021, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to September 2, 2022, is mentioned for informative, background purposes only.

ISSUES

1. Did the District properly implement the Student's individualized education program (IEP) speech services in September 2021?
2. Did the District follow proper IEP development procedures, specifically:
 - a. Did the District ensure proper parent participation in any IEP meetings in and around February and March 2022?
 - b. Did the District amend the Student's IEP to reflect any change in services (such as the setting in which certain services were being provided) that took place in or around February and March 2022?

- c. During the 2021–2022 school year, did the District follow proper procedures for responding to any change in need in resulting from the Student's disability in the area of behavior?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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 [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, as appropriate, through the special education Community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals

with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP, the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

IEP Prepared in Draft Form Prior to Meeting: School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the student's needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the

parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). If an IEP team determines that they would be appropriate for a child, a functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

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

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

STATEMENT OF FACTS

Background Information

1. According to the Parent: prior to and/or during a portion of 2018, the Student attended a different school district; while at that school district, the Student had both a "behavior plan and safety plan"; and at some point after the Student began attending the District, the behavior plan and safety plan "was removed."
2. According to the Parent, on at least one occasion in 2019, the Student eloped from the end-of-the-school day bus routine.
3. On February 18, 2021, the Student's IEP team created a new IEP for the Student. The February 2021 IEP read, in part:

The strengths of the student and the concerns of the parents for enhancing the education of their child: Student is very sweet, loves to draw, and shows her peers support with positive compliments. She works well in small group and one-on-one settings. She is also quick to learn new routines when given supports.

Concerns of parent include academic skills, such as reading and adaptive skills, such as emotional regulation, and wanting Student to have more than a one word response.

...

Social/Emotional: Student has positive relationships and interactions with peers and staff. Student will greet staff and ask for help when she needs it. Student will offer praise such as 'good job' to her peers. When staff initiates conversation, Student will sometimes need prompting and extended wait time in order to respond. Student will continue to work on her self-calming strategies (such as asking for a break) when she is frustrated. When Student becomes frustrated, she will display behaviors such as screaming, singing a lullaby loudly...and running from work area towards preferred item/activity...December 2020: Student attends social groups and participates in groups with a positive attitude and willingness to learn. Student has been practicing calming down strategies such take five deep breaths or asking for a break. Student has shown frustration online when she is wanting a preferred item. With a visual schedule and token board Student has been able to work through groups...Student demonstrates regression in social/emotional skills after extended breaks based on data.

The February 2021 IEP included the following annual goals:

- **Social Emotional:** ability to communicate her needs when confronted with a frustrating situation (baseline: 0/10 opportunities; goal: 8/10 opportunities).
- **Adaptive:** ability to independently complete a task by reviewing an example and re-reading instructions prior to asking instructor for assistance (baseline: 3/10 opportunities; goal: 8/10 opportunities).
- **Communication 1:** ability to respond with 3-4 words (baseline: less than 10% of interactions; goal: more than 50% of interactions).
- **Communication 2:** ability to take turns during a conversation (baseline: less than 10% of opportunities; goal: 50% of opportunities).
- **Communication 3:** ability to utilize visual and verbal cues in interpersonal communication (baseline: 0% accuracy; goal: 40% accuracy).

The February 2021 IEP provided the Student, in part, with the following specially designed instruction and related services in a *special education setting*:

- A total of 300 minutes of specially designed instruction in **adaptive skills** each week;
 - A total of 300 minutes of specially designed instruction in **social/emotional skills** each week, and,
 - **Communication:** 30 minutes 1 time a week (to be provided by an speech language pathologist (SLP)).
4. According to the Parent, one of the challenges the Student faces as a result of her disability is “a lack of functional communication on Student’s part, causing her to not be able to report on events or hurdles in her days.”
 5. On August 3, 2021, a District board certified behavior analyst (BCBA) emailed the private BCBA¹, stating, in part, “[Can we] connect about Student? I want to ensure that we are on the same page here as far as intervention and responding to behavior.”

Later that day, the private BCBA responded, stating, in part, “I can meet this Thursday...Attached you find the behavior support plan from May 2021 [that I created for the Student]. I would love to go over this document, as well as recent additional changes we’ve made for this client.”

6. On August 5, 2021, a District BCBA emailed the Parent, stating, in part:
I wanted to share with you the contact information of the BCBA who supports the District high school. I have included her on this email and will also connect with her before the beginning of the year to ensure she’s aware of your intervention plan [at] home and how to continue to support generalization.

2021–2022 School Year

1. The District’s first day of school was August 18, 2021.
2. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of autism, was in the ninth grade, and attended a District high school. At that time, the Student’s February 2021 IEP was in effect.
3. According to the Parent, at the start of the 2021–2022 school year:
 - “Student was struggling behaviorally and emotionally, but no functional behavior or safety plan was in place”;
 - “Student does not do well initially in a new environment, causing her to struggle behaviorally and emotionally”;

¹ According to the District, the private BCBA “was invited to attend the Student’s IEP meetings by the Parent. It is our understanding that the Student receives private services from this individual. Per the Parent’s request, the District signed a release of information with the private BCBA to exchange information and discuss what the private BCBA was working on with the Student in order to consider similarities and differences in our plan at school. The District has not contracted with the private BCBA or her employer.”

- In at least one conversation Parent had with a District staff member, Parent was informed “Student would work with a BCBA [in the] creat[ion] of a functional behavior plan [but] this did not happen”;
 - “Student stayed home [even after the start of the 2021–2022 school year] until the case manager/teacher started communicating with [me, as I was] concern[ed] about Student’s behavior, safety, and lack of thorough communication”;
 - Student did not receive the speech therapy services in her IEP for at least three weeks in September 2021, as the District had not been able to hire an SLP to begin with the start of the 2021-2022 school year.
4. The complaint investigation timeline began on September 2, 2021.
 5. According to emails, in September 2021:
 - A “substitute” speech therapist was assigned to the Student as of September 7, 2021, but the substitute speech therapist did not begin working until September 14, 2021;
 - Due to the delay in onboarding the substitute speech therapist, the Student missed “4 [speech therapy] sessions”; and,
 - The substitute speech therapist worked with Student, in part, on “redirecting her attention to where [the speech therapist was] looking, breaking tasks into smaller [segments], and giving two options for each [task].”
 6. In its response, the District acknowledged, “During September 2021, the Student did not receive 30 minutes of weekly SLP services. [But] since [the substitute SLP started working with Student on October 1, 2021], the District has properly implemented the [communication services in] the Student’s IEP.”
 7. The District was on break November 22–26 and December 20–31, 2021.
 8. According to the District response and contact attempt report, “on January 4, 2022, in preparation for the Student’s upcoming re-evaluation, the District sent a letter requesting consent for the re-evaluation home with the Student.”
 9. According to a contact attempt report in the District’s response, the District obtained written consent from the Parent to reevaluate the Student on January 31, 2022.
 10. According to the District, “between January 31, [2022] and February 11, [2022], the Student was evaluated in the areas of social/emotional, adaptive, behavior, cognitive, academic, communication, assistive technology, fine motor, and gross motor.”
 11. According to a contact attempt report in the District’s response, on February 1, 2022, the Parent confirmed she could attend an eligibility meeting scheduled for February 14, 2022.

The District’s response also included a review IEP invitation, dated February 1, 2022, and addressed to the Parent, inviting the Parent to attend an IEP meeting scheduled for February 14, 2022, to discuss the following topics: transition services; annual goal progress; develop ESY; review current IEP; and review instructional needs.

12. The District's response included a notice of meeting that stated on February 9, 2022, a meeting invitation was sent out to several individuals², including the Parent, for an eligibility determination meeting scheduled for February 14, 2022.

13. An IEP meeting was scheduled to take place on February 14, 2022.

According to the Parent's complaint request, as of Saturday, February 12, 2022, she had not been provided with either a prior written notice, a copy of the completed psychological evaluation, or a draft IEP. According to the Parent, she "stated she [would be] unable to attend [the February 14, 2022] meeting if [the foregoing] documents were not provided by that Saturday."

14. On February 13, 2022, the Parent requested the February 14, 2022 meeting be canceled, as she was sick with COVID-19.

15. According to the Parent, she received a voicemail from the school psychologist on February 14, 2022, stating the IEP team would meet without the Parent.

On February 14, 2022, the school psychologist emailed the Parent, stating, in part:

I left a voicemail on your [phone] moments ago regarding proceeding with the eligibility/evaluation and IEP meeting today so that the paperwork stays current in compliance...once you are doing better, we can reschedule to review the eligibility/evaluation and amend the IEP. This way, Student remains eligible for such for services with both the current eligibility/evaluation and IEP, then we can review at your convenience.

16. The Student's IEP team met on February 14, 2022. The following individuals were present: life skills teacher; District representative; general education teacher; SLP; PT; OT; and an assistive technology specialist.

The District's response included meeting notes from the February 14, 2022 IEP meeting. Those notes read, in part:

Life skills teacher: Student seeks adult attention currently. Future focus will be on her being independent. In art, [teacher] guides her to a level so she doesn't become verbally loud in class due to the size of this class. When we do projects in Life Skills class, she is willing. Current visual schedule, structure and support in class is an appropriate level of support to address behavioral needs.

...

SLP: Possible to get her to have a joint attention and attend to what others are thinking and it takes redirecting and prompting. We can engage her in a turn taking conversation with visual prompting. It is harder for her to see the bigger picture and by breaking into smaller tasks is more successful.

...

² Physical therapist (PT), SLP, assistive technology specialist, special education teacher, occupational therapist (OT), school psychologist, Parent, and general education teacher.

OT: She asks staff to write for her but that is a behavioral choice, not a motor issue. Will continue to support school personnel for sensory and calming strategies.

Life skills teacher: One factor with Student is her mood is dependent upon her physical factors, For example...can lead to difficulty completing task and staying focused...too much adult support decreases willingness to do a task independently. We want her to be independent and we will continue to work on those skills. Her independent skills regress when she has too much paraeducator assistance. For example, asking staff to write for her, asking staff to read for her, or asking staff to count for her.

The District's response included an "Evaluation Summary," dated February 14, 2022. It read, in part:

Review of Existing Data:...Student needed ESY services as she had shown regression in reading, writing, math, and social/emotional skills after extended breaks...Mother reports a dramatic decline in fine motor skills from the last IEP. As an outcome of the phone call, the areas of behavior, assistive technology, gross motor and fine motor were added for areas to be assessed.

...

Medical-Physical Findings:...Parent reports that Student has been diagnosed with ADHD and autism.

...

General Education:...The Unified PE teacher reports Student is more engaged with class activities when the paraeducator is not directly involved and when she receives peer support guiding her through activities...Student's engagement in PE varies from day to day.

...

Social/Emotional: The Adaptive Behavior Assessment System for Children-3 (ABAS-3), social skill domain, was used to assess Student's social skills...She struggles with tolerating changes in her environment and routine.

...

The Social domain standard score...summarizes performance across the Leisure and Social skill areas...[and] Student's...is in the extremely low range. The leisure skills needed for engaging in play and planning recreational activities are in the low range for Student. Her ability to interact socially, initiate and maintain friendships, express and recognize emotions, and assist others when needed is in the extremely low range. Results of testing continue to demonstrate Student needs social/emotional instruction to access curriculum.

Teacher input and observations report Student continues to work on using coping strategies when frustrated (taking deep breaths, asking for a break, returning to task with a calm body). Visual schedule and writing out schedule have proven to be effective in planning for transitions and planning for each class period, thereby decreasing frustration.

Student is working on making deliveries to different offices around the school. Scripts, visuals and eye contact are learned and practiced for greetings and interactions, in lessons. She continues to need prompts and redirection from staff for these social interactions, with the goal of increasing her independence.

Adaptive: Parent completed the Adaptive Behavior Assessment Scale-3 (ABAS-3) Parent Form as part of this reevaluation to assess Student's activities of daily life such as

communication, social skills, and independent living. Teacher input was also obtained to describe Student's adaptive/independent life skills.

...

Student's communication abilities, including speech, vocabulary, listening, conversation, and nonverbal communication skills, are in the extremely low range. She functions in the extremely low range when performing basic academic skills such as reading, writing, and mathematics, as well as functional skills such as taking measurements and telling time. Her ability to make independent choices, exhibit self-control and take responsibility when appropriate is in the extremely low range.

...

Her ability to function and get around in the community...ability to protect her physical wellbeing and prevent and respond to injuries...ability to perform selfcare activities...[and] ability to provide basic care of a home...[are all in] the extremely low range.

The IEP manager reports Student needs staff supervision throughout her school day. Student tends to attach herself to a staff member and will ask that staff member to do things for her (e.g., draw pictures). Student struggles to detach herself from staff, but when the environment is structured so that a staff member is not directly working with her, Student has demonstrated the ability to follow classroom procedures and engage with class work. Using a variety of staff to work with Student helps her to participate and engage in classroom work and become more independent. This has also been evident during Unified PE, lunch time and break times, where Student used to ask the classroom teacher/staff to do things for her and now has increased her independence by doing things on her own, such as going to the fridge, getting her lunch/snack and returning to her desk for free time...Student continues to make gains in the ability to work independently.

Behavior:...Student continues to struggle with behavior when she clearly can't state her emotions. Student continues to need social/emotional instruction, including 2 and 4-step visual/written schedules to increase coping with frustration. Student benefits from these measures as it helps her to anticipate what is coming next and gives parameters to see what her day and class period look like. This reduces anxiety and frustration and allows Student to engage with class activities...Parent reports that Student has challenging behaviors and needs prompting to do tasks. Parent is also concerned for Student's safety (e.g., wandering off). Student had been practicing calming down strategies such as taking five deep breaths or asking for a break. Student had shown frustration online when she wanted a preferred item. With a visual schedule and token board Student was able to work in groups. Student attended social groups and participated in groups with a positive attitude and willingness to learn.

Presently, behaviors are managed using visual and written schedule and staff supervision. Student's behaviors after a long weekend or extended break require time for her adjust back to the routine of school. For the most part, Student is able to focus on her work and is not significantly distracted by others in her class or other activities happening in class. This is supported by data showing that Student needs a visual/written 2 step schedule about once every two weeks when she is agitated...Typically, a routine 4 step visual/written schedule is used for daily class planning.

...

Communication:...Student required frequent redirection to attend to tasks and regularly made multiple selections for the same stimulus provided requiring some interpretation by

the assessor as to her true intent as well as frequent reminders to make one selection per question.

17. In relation to the February 2022 reevaluation report, the Parent's reply read, in part:

The District's response states that it evaluated the Student in the area of behavior on January 31, 2022, in preparation for the February 14, 2022, re-evaluation. In fact, there is very little evaluation for behavior in the district's reevaluation. The school psychologist stated, on page 13 of the District's reevaluation, '[i]nput from mother, input/observations from staff and review of the previous IEP were used to assess Student's behavioral skills.' That is the sum of the source of the District's 'behavior evaluation.' The District did not gather any behavioral data, use a standardized assessment, use RTI or use or any direct observation as a basis for the behavior section of the reevaluation. This behavioral evaluation does not provide much, if any information about how often different challenging behaviors were happening and objective information about factors that contribute to the behaviors.

18. On February 14, 2022, the Student's IEP team created a new IEP for the Student. The February 2022 IEP noted the Student's progress on the February 2021 IEP goals:

Social Emotional: ability to communicate her needs when confronted with a frustrating situation (baseline: 0/10 opportunities; goal: 8/10 opportunities).

...June 2021: Student has made great progress in communicating when she is frustrated. She appropriately communicates her needs/wants with 40% of opportunities.

8/13/21: Student appropriately communicated her needs 1/10 she had a difficult time with this task. She successfully communicated her needs 1/10 of opportunities presented.

01/27/22: Student is able to communicate her needs when she is frustrated in 3/10 opportunities on average. She will state what she wants ("Choice time please"), or call for a staff ("[staff], I need your help"), or prompt herself to use a calming strategy ("Calm down with 5 deep breaths"). She struggles when the desired task, like choice time, is not available at that moment.

Adaptive: ability to independently complete a task by reviewing an example and re-reading instructions prior to asking instructor for assistance (baseline: 3/10 opportunities; goal: 8/10 opportunities).

June 2021: With verbal prompt to read instructions first Student reviews the task or visual job checklist. She is able to complete the task with 50% of opportunities. She needs verbal and gestural cues guiding her through the task.

8/13/21 Student was able to independently complete tasks by reviewing an example and re-reading 2/10 of opportunities presented.

1/27/22 Data collection over a 4 week period show that Student is currently independently starting and working on a task before asking for help 44% of the time. She is more independent with familiar functional tasks and routines (entering the class, daily calendar, classroom jobs), and less independent with familiar academic tasks (writing journals, ULS reading, math worksheets).

Communication 1: ability to respond with 3-4 words (baseline: less than 10% of interactions; goal: more than 50% of interactions).

Communication 2: ability to take turns during a conversation (baseline: less than 10% of opportunities; goal: 50% of opportunities).

Communication 3: ability to utilize visual and verbal cues in interpersonal communication (baseline: 0% accuracy; goal: 40% accuracy).

Student made good progress in communication goals over the past academic year. Student is learning use more words to describe her thoughts to a listener by using scripted carrier phrases 'I want ___' and 'can you draw ___' when she initiates requests for para to draw pictures in 8/12 opportunities with 7 gestural prompts. SLP also educated Student on 5 steps for reciprocal conversation (i.e., greet, ask a question, stay on topic of conversation, explain goodbye, give farewell) to follow to complete a simple conversation with a partner. Student took turns in conversation according to the 5 steps in 11/13 opportunities when talking with a conversational partner in class (i.e., para and teacher). Student needs to work on reciprocating questions in conversation to receive more information about another person. Student is also starting to intentionally direct her eye gaze to areas of conversation to help with joint attention with communication partners. Student is reading a book promoting eye contact with communication partners at this time. SLP recommends slight modifications to update existing communication goals for continued growth and progress in social communication.

In relation to annual IEP goals, the February 2022 IEP:

- Kept the existing **social emotional** goal, but with an updated baseline of 3/10 opportunities;
- Kept the existing **adaptive** goal, but with an updated baseline of 4/10 opportunities;
- Included three communication goals:
 - **Communication 1** (ability to utilize "targeted carrier phrases";
 - **Communication 2** (ability to take turns during a conversation); and,
 - **Communication 3** (ability to make eye contact during a conversation).

The February 2022 IEP includes, in part, the following accommodation: "close adult supervision at all times." The February 2022 IEP included specially designed instruction in social/emotional, reading, math, written language, and adaptive.

19. On February 28, 2022, District staff emailed the Parent a copy of two different prior written notices and meeting notes from the February 14, 2022 IEP meeting. One of these prior written notices was dated February 16, 2022, and read, in part, "Student continues to meet eligibility criteria as a student with autism, is adversely affected by the disability, and needs specially designed instruction to access curriculum."
20. In relation to March 2022 events, the Parent's complaint request read, in part, "Most of Student's behavior occurs due to high sensory issues with escalate her behaviors."
21. On March 3 and 4, 2022, the Parent and life skills teacher exchanged emails regarding scheduling at least one IEP meeting in late March 2022, to review the reevaluation report and the Student's IEP. It appears one IEP meeting was scheduled for March 28, 2022.

22. According to the Parent's complaint request:

[During] the week of [both] March 14th [and] March 21st, 2022, the life skills teacher called the parent requesting how to support Student, stating she [had done] everything she could at school to help her, and [the case manager asked if] there anything going on at home [that might be causing the Student to demonstrate the behaviors she was displaying at school].

The severity of behaviors got so high, that students in the classroom were removed, instead of [the District] reaching out to specialists (such as the board certified behavior analyst, occupational therapist³, etc.) for behavioral support.

23. According to the Parent's complaint request:

On March 23rd, 2022, the Parent had a meeting with the school psychologist, and while discussing the behavior plan, the parent learned that Student was being taken to private rooms alone with a paraeducator, [with] one of the rooms being the school psychologist's office. Parent called the case manager, and the case manager stated it had happened four times. The parent stated that this is not allowed to happen without it being included in the IEP, and [without first] notifying the parent [of the same].

In relation to the above, the Parent's reply clarified, "On March 23, 2022...the school psychologist mentioned to the Parent that staff had been using small rooms, including the school psychologist's office, as rooms to put Student in when Student's behavior escalated."

During this investigation, OSPI asked the District several follow-up questions in relation to the above-described incidences. In response, the District stated:

The special education office area...has a greeting space, four offices and [a] conference room.

The conference room is general use space that has a large conference table with 10-12 chairs at the table. Students use this space to de-escalate and problem solve with staff.

The school psychologist conducts evaluations in [the] conference room located in the special education offices. The school psychologist does not conduct evaluations in their office as it is a very confined space.

Students, including the Student, do not go to the school psychologist's office as a calm down strategy. The large conference room adjacent to the school psychologist's office is used by students as a space to 'calm-down' and problem solve with staff.

The school psychologist does not recall using...spaces [other than the conference room] with the Student.

During January and February 2022, the Student was in the conference room near the school psychologist and speech pathologist's office because she was being re-evaluated/assessed to re-determine eligibility for special education.

³ In her complaint request, the Parent stated, "Student's IEP states Student has OT support as needed, and when things escalate the teacher is supposed to reach out to the OT. [But] this did not happen."

On, March 23, 2022, the Student went to the office across the hall from the life skills classroom to work with two paraeducators prior to walking around the building during 3rd period Community Living, as noted in her communication log. The Student has not accessed the school psychologists office due to the confined space.

A staff member was always present with the Student when the conference room was accessed. [And] the Student was not isolated during the 2021–22 school year.

24. On March 23, 2022, the life skills teacher emailed the Parent. That email showed, in part: when the Student would get frustrated, “the only strategy Student will accept is having staff sit with her and draw, but that is supposed to be her earned choice time, so when we do not draw with her she continues to get...upset”; on March 23, 2022, the Student became dysregulated on two occasions; for one of those occasions, rather than draw with the Student, the life skills teacher “prompted Student to calm down...I showed her calming visuals, I prompted her to take deep breaths”; during the second emotional dysregulation, “the rest of the class was able to work in another location so [the life skills teacher] would stay and help Student calm down”; an IEP meeting was scheduled for March 28, 2022, to discuss, at least in part, behavioral concerns; and prior to that IEP meeting, the life skills teacher wanted the Parent’s input on the behaviors and how to best address them.⁴

25. On March 23, 2022, the life skills teacher emailed the District BCBA, stating, in part:

I think it's time to take another look at some of our routines and supports for Student. We've had some significant behavior escalation recently when we try to have staff back off or have her choose an activity other than drawing with staff. When she gets upset because she can't do choice time, she continues to be escalated (screaming, crying) seeking an adult to help her calm down. My main concern is that she is so dependent on adult proximity to deescalate, when that is the thing we are trying to get away from.

What I have been doing is making a visual for her to show that a teacher will sit with her when she has a quiet voice first. Today, she followed me around the classroom for about 65 minutes, screaming and crying (I had cleared the room). I offered her fidgets, snacks and water, showed her the calming visual and her visual prompt. She would start to calm down a bit, then ask for me, and when I would point to the visual, she would scream and stomp more.

My plan is to: (a) eliminate any computer time outside of earned choice time, since even academic activities on the computer bleed into reinforcing computer time; (b) be strict with the amount of choice time (she has been pushing it longer and longer, and it's easier to keep her happy than make it an issue sometimes); (c) continue to withhold adult attention when it has not been earned until she can calm down on her own; and, (d) teach and reinforce other calming strategies (not sure what that will look like yet, since not much else is working right now).

I feel like I know what we need to do, but just because of the other constraints and student needs in the classroom we've gotten into some patterns to keep it easy rather than

⁴ The Parent’s reply included a March 23, 2022 note from the life skills teacher that also detailed some of the behavioral challenges the Student experienced that day as described in the email.

challenging her to be more independent. So mainly I'm just processing my thoughts and seeing if you have any other input. It would also be helpful if I could have you or an RBT come in to observe one of these incidents.

The District BCBA responded (on March 30, 2022), stating, in part:

Your strategies sound like you are on the right path. You may experience higher behaviors as you implement these strategies because there is history of intermittent reinforcement (i.e., varied reinforcement time, access to reinforcement on the computer while doing work expectations, etc.). I love the idea of a visual and showing her what is expected for staff to re-engage with her. You may even try taking a picture of her sitting in a chair and using this as your visual to show her when she is upset. Sometimes it helps to see themselves doing what is expected vs. a generic picture. I would be happy to come observe after spring break.

The life skills teacher responded (on March 31, 2022), stating, in part, "We'll try the picture idea. I'll also share with you what I have for our data tracking and I'm working on an informal behavior plan write-up to include in the IEP. I know Parent respects your opinion so she wants you at the meeting to discuss behavior supports.

26. According to the District, "The first time the life skills teacher noticed behaviors (i.e., stomping, crying, screaming, loud vocalizations leading to room clears) was towards the end of March 2022."
27. According to the Parent, on March 24, 2022, she "found out the BCBA [had] never [been] involved, even [though Parent had already] requested that [a BCBA] be involved multiple times."
28. According to the Parent: she contacted the District on March 25, 2022, to schedule another IEP meeting; the District informed the Parent the requested meeting would be an IEP amendment meeting, not a meeting to develop an annual IEP; the District agreed to consult with a BCBA in relation to the IEP amendment meeting only after the Parent requested the same; and the Parent was informed "several crucial team members were not going to be present during the [IEP] amendment [meeting]", including the secondary and transition program coordinator for special education, PT, and the BCBA.

In relation to scheduling an IEP amendment meeting in March 2022, the Parent's complaint request further stated: the assistant principal initially told the Parent the meeting would be not longer than an hour; the Parent articulated her belief that more than an hour would be needed, in part, because the Parent is not a native English speaker; the Parent spoke with several other IEP team members, each of whom told the Parent they were comfortable with a meeting lasting longer than one hour; and the assistant principal subsequently agreed to a meeting lasting an hour and twenty-five minutes.

29. On March 25, 2022, the Parent was invited via email to an IEP meeting scheduled for March 28, 2022. According to the email, the following individuals were scheduled to attend: life skills teacher; school psychologist; SLP; OT; two general education teachers; assistive technology

instructional coach; Parent; and "other service providers and consultants Parent would like to invite."

On March 25, 2022, the Parent responded, stating, in part:

I would like to reschedule. This is due to not having a copy of the behavior plan, nor having enough time to review it. Furthermore, there will be three people absent from this meeting, more specifically the District BCBA, whose opinion would hold weight [for] this meeting in light of Student's recent behaviors.

According to the District and documented in email:

When the Parent hastily canceled the IEP meeting on March 28, 2022, the team was not planning to discuss the Student's concerning behaviors or whether a behavior plan was appropriate, as [the life skills teacher's] consultation request was newly submitted. The District had planned to convene the IEP team after the BCBA had collected sufficient data to determine whether a behavior plan was necessary for the Student.

[And also on March 25, 2022], the life skills teacher contacted the District's compliance clerk, requesting assistant to reschedule the IEP meeting, and offering two weeks of availability to reconvene the team.

30. According to the District's response, on March 28, 2022, the "compliance clerk inform[ed] the life skills teacher that the Parent [stated she was] available for the Student's IEP meeting at the end of April [2022]."
31. The Student withdrew from the District on April 13, 2022. (According to the District, as of October 26, 2022, the Student has not re-enrolled in the District.)
32. The District's last day of school was June 9, 2022.
33. During the course of this investigation, OSPI's investigator asked the District, "Does the District have any documentation of number of elopement incidences Student experienced during the 2021-2022 school year? And/or a recollection from pertinent staff as to how significant of an issue this appeared to be in the school setting?"

In response, the District stated, "The District does not have any documentation relating to elopement incidents or staff recollections (of the student eloping), as the Student did not elope while at school or under the District's care."

2022–2023 School Year

34. On September 19, 2022, OSPI received the District's response to the complaint.

In relation to Issue 1, the District proposed "provide the Student with 120 minutes (30 minutes for four sessions) of SLP services as compensatory services."

In relation to Issue 2(a), the District stated, "As corrective action for this violation, the District proposes to provide additional training for special education staff regarding the importance of parental participation in IEP meetings."

In relation to Issue 2(b), the District stated, "The location of the Student's services [throughout the 2021-2022 school year] was consistent with the IEP and did not change."

In relation to Issue 2(c), the District stated, in part:

On January 31, 2022, the Student was evaluated in the area of behavior. The evaluation summary noted that the Student had some low-level behavioral challenges when she was frustrated or upset (e.g., loudly singing a lullaby, leaving the work areas towards a preferred activity, screaming). At the IEP meeting on February 14, 2022, the IEP team determined that the Student did not require additional behavioral supports. The Parent also reported low-level behaviors such as needing to be prompted before performing tasks, which did not rise to the level requiring behavioral supports or intervention.

The life skills teacher observed that the Student struggled to use self-calming techniques and was too dependent on adults to calm her down when she became upset. In response to these observations, the life skills teacher contacted the District's BCBA on March 23, 2022, and requested a review of the routines and supports that were in place for the Student.

The BCBA and the life skills teacher were working to collect data on the Student in order to determine whether her IEP needed to be amended and/or a behavioral intervention plan may be necessary to address the Student's behaviors. During this time, there was no change to the Student's IEP. However, before the District could begin collecting observations and data, the Parent withdrew the Student from the District.

35. The Parent concluded her complaint request with, in part, the following:

My daughter needs an Independent Educational Evaluation (IEE). My daughter needs a facilitated IEP process to review the results of the IEE and have a serious conversation about an alternative placement. My daughter needs an FBA (Functional Behavior Assessment), functional behavior plan, emergency behavior plan, safety plan, and an emergency safety plan to be included in the evaluation.

...

My daughter needs the school to support a home based placement or a private placement so that education services are fully supported. This placement needs to cover lost learning from the time my daughter has been out of school.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not follow proper procedures for implementing the speech provisions of the Student's February 2021 IEP in September 2021.

A 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

child'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: the Student's February 2021 IEP provided the Student with the related service of communication, in a *special education setting* for a total of 30 minutes each week; the first day of school for the 2021–2022 school year was August 18, 2021; a speech therapist did not begin working with the Student until September 14, 2021; and as a result of this delay, the Student missed four speech therapy sessions in September 2021. In looking specifically at the provision of speech services in September 2021, the time period and service identified for investigation by the Parent, OSPI finds the foregoing to represent a material failure to implement the Student's February 2021 IEP. Accordingly, some 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 she would have been, but for the district's violations of the IDEA. Here, the District acknowledged its failure to materially implement the Student's speech services in September 2021. To rectify that failure, the District proposed "provid[ing] the Student with 120 minutes (30 minutes for four sessions) of SLP services as compensatory services." OSPI finds the District's offer to be an equitable compensatory education remedy; the District will be required to provide the Student with a total of 120 minutes of speech therapy services.

Issue 2: IEP Development – The Parent alleged the District did not follow proper IEP development procedures. Specifically, that the District: (1) did not ensure proper parent participation in IEP meetings in and around February and March 2022; (2) did not amend the Student's IEP to reflect any change in services (such as the setting in which certain services were to be provided) that took place in and around February and March 2022; and (3) did not follow proper procedures for responding to any change in need resulting from the Student's disability in the area of behavior.

Parent Participation in February and March 2022 IEP Meetings

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. When a public agency is

faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, such as parental participation and timely annual review of the IEP, the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. (Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.)

Here, the Student's February 2021 IEP provided the Student with services through February 22, 2022. Documentation provided to OSPI during the course of this investigation shows: on both February 1 and 9, 2022, the Parent was invited to an IEP meeting scheduled for February 14, 2022; and, a contact attempt report included in the District's response stated the Parent confirmed her ability to attend the February 14, 2022 IEP meeting on February 1, 2022.

According to the Parent, as of Saturday, February 12, 2022, she had not been provided with either a prior written notice, a copy of the completed psychological evaluation, or a draft IEP. On February 13, 2022, the Parent requested the February 14, 2022 meeting be canceled, as she was sick with COVID-19. On February 14, 2022, the Student's IEP team met—without the Parent—to develop a new IEP for the Student, as well as review an evaluation report dated February 14, 2022.

As a preliminary matter, OSPI notes: a district may choose to provide a parent with a copy of a draft IEP and draft prior to an IEP development meeting, but the regulations do not require a district to take this step.⁵ Here, then, the fact that the District had not provided the Parent with a draft IEP prior to the February 14, 2022 meeting does not represent a violation of the IDEA.

Still, for three reasons, OSPI finds an IDEA violation in the IEP team having met on February 14, 2022 without the Parent.

First, the District stated the IEP team met without the Parent on February 14, 2022, in significant part, because it did not want to miss the deadline by which a new annual IEP needed to be developed for the Student. But it is important to note: the February 2021 IEP provided the Student with services through February 22, 2022. Accordingly, even though the Parent could not meet on February 14, 2022, conceivably, there were five other days the IEP team may have been able to meet—including the Parent—that represented dates prior to the expiration of the previous annual IEP.

Second, the Parent stated she could not attend the February 14, 2022 IEP meeting because she was ill; the Parent repeatedly expressed a desire to participate in IEP processes; and, when a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, such as parental participation and timely annual review of the IEP, the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process.

⁵ Similarly, while not required, OSPI reminds the District that if requested by a parent, a district can consider providing a parent with a copy of a draft evaluation, prior to an IEP meeting to discuss the same, to facilitate parent participation at the IEP meeting.

Third, in its response, the District acknowledged it was an error for the IEP team to meet without the Parent to comply with the annual review requirement. The District stated it attempted to remedy the error but reconvening the IEP team with the Parent; however, the District stated the Parent withdrew the Student before they could meet.

For the foregoing three reasons, OSPI finds an IDEA violation in the IEP team meeting—without the Parent—on February 14, 2022.

In determining an appropriate remedy for this violation, OSPI does note, in part, the following: the February 14, 2022 reevaluation report, which influenced the February 14, 2022 IEP, does incorporate feedback from the Parent⁶; relatively soon after the February 14, 2022 IEP meeting, the District attempted to schedule an IEP meeting with the Parent to discuss the reevaluation report and/or revise the Student's February 2022 IEP^{7 8 9}; on March 23, 2022, the Parent met with the school psychologist to discuss the Parent's concerns regarding the Student's behavior; and, on March 23, 2022, the Parent and the life skills teacher communicated via email regarding the Student's behavioral needs.

In its response, the District proposed "provid[ing] additional training for special education staff regarding the importance of parental participation in IEP meetings." OSPI finds this to be a suitable remedy, and certain staff at the Student's 2021–2022 school will be required to attend a training on parent participation in IEP meetings.

⁶ The February 14, 2022 reevaluation report read, in part, "Parent reports a dramatic decline in fine motor skills from the last IEP"; "Adaptive: Parent completed the Adaptive Behavior Assessment Scale-3 (ABAS-3) Parent Form as part of this reevaluation to assess Student's activities of daily life such as communication, social skills, and independent living"; and "Behavior...Parent reports that Student has challenging behaviors and needs prompting to do tasks. Parent is also concerned for Student's safety (e.g., wandering off)."

⁷ For example: in early March 2022, the Parent and life skills teacher exchanged emails regarding scheduling either one or two IEP meetings in late March 2022, to review the reevaluation report and the Student's IEP and a meeting was scheduled for March 28, 2022. Then, on March 25, 2022, the Parent was invited via email to an IEP meeting scheduled for March 28, 2022.

⁸ Importantly, in scheduling the end-of-March 2022 IEP meeting, the Parent noted the District was responsive to her concerns about the length of the IEP meeting and needed a meeting longer than an hour. The assistant principal agreed to a meeting lasting an hour and twenty-five minutes.

⁹ On March 25, 2022, the Parent stated she would not be attending the IEP meeting scheduled for March 28, 2022 because: (1) the Parent had not been provided with a copy of a draft behavior plan for the Student; and (2) the Parent did not believe the District BCBA would be in attendance at the March 28, 2022 meeting. (On the Parent's first point, OSPI notes: as of end-of-March 2022, it does not appear the IEP team had determined a behavioral intervention plan (BIP) was necessary for the Student, so there would not have been a draft BIP to share with the Parent prior to the IEP meeting.)

IEP and Educational Setting

The Parent alleged the District failed to properly implement the Student's IEP when it removed the Student from her educational setting when she was emotionally dysregulated, to take a break in a room near the school psychologist's office.

Here, the documentation shows: (1) the Student was taken to the conference room on at least a couple occasions in January and February 2022, as the school psychologist was administering assessments to the Student as part of a reevaluation; and, (2) at least occasionally throughout the school year, the Student was taken to the conference room in order to help the Student calm down after becoming emotionally dysregulated. The documentation does not show the Student's access to specially designed instruction was materially affected by the Student's occasional and temporary use of the conference room. Nor would the occasional use of the conference room warrant amending the IEP, or need to be documented specifically in the IEP.

In fact, the Student's occasional and temporary use of the conference room during the 2021–2022 school year appears to comport with both of the Student's IEPs. For example, the February 2021 IEP read, in part:

Social Emotional: Student will continue to work on her self-calming strategies (such as asking for a break) when she is frustrated. December 2020: Student attends social groups and participates in groups with a positive attitude and willingness to learn. Student has been practicing calming down strategies such take five deep breaths or asking for a break.

And both the February 2021 and 2022 IEPs: (1) included an accommodation that read, "Help Student identify a safe person/place if feeling anxious"; (2) permitted the Student to utilize "Choice Time," by which the Student was able to select an activity she wanted to participate in when feeling stressed; and, (3) included an annual goal focused on social emotional self-advocacy (**social emotional**). Accordingly, OSPI does not find a violation in relation to the Student's temporary and occasional use of the conference room during the 2021–2022 school year.

IEP's Teams Response to Behavioral Need

The Parent alleged the District did not follow proper procedures to respond to a change in need in the area of behavior during the 2021–2022 school year.

A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

In developing, reviewing, and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports¹⁰ and other strategies to address the student's

¹⁰ Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include

behavior. This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior.

First, the documentation shows the District did provide the Student with various positive behavioral supports throughout the 2021–2022 school year. For example: (1) in part, the February 2021 IEP mentioned District staff worked with the Student on calm-down strategies, including taking five deep breathes and self-advocating for a break; and (2) included a social emotional goal related to self-advocacy (**social emotional**); (3) the February 14, 2022 meeting notes show two different providers reported they were able to successfully keep the Student focused on classwork via the use of visual schedules and redirection and prompting; and, (4) the documentation shows Student was permitted to utilize a breakroom to recenter herself when she became dysregulated.

Second, the Student underwent a comprehensive reevaluation in February 2022. The February 2022 reevaluation: incorporated feedback from the Parent; included assessments, in part, in the areas of social emotional, adaptive, and behavior; and most importantly, generally documented that the behavioral interventions being provided to the Student were sufficient to address the Student's behavioral needs.

Third, based on the documentation provided to OSPI during this investigation, the Student first underwent a behavioral regression in mid-to-late March 2022, after the completion of the February 2022 evaluation. For example, staff noted an increase in emotional outbursts by the Student. Importantly, following recognition of the Student's mid-to-late March 2022 behavioral regression, District staff took several steps, including, in part: (1) the life skills teacher collaborated with both the Parent and the District BCBA; (2) the life skills teacher committed to tracking behavior-related data, with the intention being to discuss that data, once gathered, with the District BCBA; (3) the psychologist discussed the private behavior plan with the Parent; and, (4) District staff worked with the Parent in scheduling an IEP meeting for March 28, 2022, to discuss, at least in part, the Student's behavioral needs. But the Parent canceled the March 28, 2022 meeting on March 25, 2022, and then withdrew the Student from the District on April 13, 2022. On the basis of the foregoing facts, OSPI does not find the District failed to adequately respond to any potential change in need in the area of behavior for the Student.

Should the Student reenroll in the District, though, OSPI reminds the District: (1) given the fact that the Student's emotional regression took place after the District completed its February 2022 reevaluation of the Student, it is possible the IEP team will now need additional data on the Student's needs resulting from the Student's disability in the area of behavior¹¹; (2) evaluative data shows the Student experiences behavioral regressions following extended breaks from school, so, were the Student to reenroll in the District in the future, it is possible the Student will enter the

the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior.

¹¹ For example, it might be necessary to conduct a functional behavioral assessment (FBA).

District with greater behavioral needs than when she unenrolled; and (3) in her complaint request, the Parent requests an independent educational evaluation (IEE).

CORRECTIVE ACTIONS

By or before **November 14, 2022, December 5, 2022, January 16, 2023, and February 10, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **November 14, 2022**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 120 minutes of speech therapy services.

The District will provide OSPI with documentation of the schedule for services by or before **November 14, 2022**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated speech therapist. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. The compensatory education may be provided remotely, if remote services are appropriate to meet the Student's needs.

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 **February 10, 2023**, including those needing to be rescheduled.*

No later than **February 10, 2023**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **February 10, 2023**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on parent participation in IEP processes. The training will include examples.

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2021–2022 school year. The District will provide the trainer with a copy of this decision, SECC 22-102.

By or before **November 14, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **December 5, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by December 9, 2022.

By **January 13, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **January 16, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this 31st day of October, 2022

Dr. Tania May
Assistant Superintendent of 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.)