

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-14

PROCEDURAL HISTORY

On February 9, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 10, 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 February 11, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension, in part, to February 25 and March 7, 2022.

On February 16 and 18, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on February 16 and 24, 2022, respectively.

On February 23, 2022, OSPI received the District's response, part 1 to the complaint and forwarded it to the Parent on February 24, 2022. OSPI invited the Parent to reply.

On March 3, 2022, the District requested a further extension of time to respond to the complaint. OSPI granted the extension, in part, to March 7 and 9, 2022.

On March 5, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 7, 2022.

On March 7, 2022, OSPI received the District's response, part 2 to the complaint and forwarded it to the Parent on March 8, 2022. OSPI invited the Parent to reply.

On March 8 and 18, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 21, 2022.

On March 10, 2022, OSPI received the District's response, part 3 to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On March 23, 2022, the Parents requested an extension of time to reply to the District's response to the complaint. OSPI granted this request and the Parents' reply deadline was extended to March 31, 2022. This request created an exceptional circumstance and OSPI extended the 60-day deadline for the decision, as permitted by WAC 392-172A-05030.

On March 31, 2022, the Parents requested an extension of time to reply to the District's response to the complaint. OSPI granted this request and the Parents' reply deadline was extended to April

11, 2022. This request created an exceptional circumstance and OSPI extended the 60-day deadline for the decision, as permitted by WAC 392-172A-05030.

On April 1 and 4, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on April 4, 2022.

On April 6, 2022, OSPI requested additional information in the form of a questionnaire for the Student to respond to. On April 14, 2022, the Parent provided the requested information and additional information. OSPI forwarded the additional information to the District on April 15, 2022.

On April 8, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on April 11, 2022.

On April 11, 2022, the Parents requested an extension of time to reply to the District's response to the complaint. OSPI granted this request and the Parents' reply deadline was extended to April 19, 2022. This request created an exceptional circumstance and OSPI extended the 60-day deadline for the decision, as permitted by WAC 392-172A-05030.

On April 20, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on April 25, 2022.

On April 22 and 25, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on April 25 and 26, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on February 10, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Has the District implemented the Student's individualized education program (IEP) since February 10, 2021, including but not limited to implementation of the following:
 - a. Assistive technology and accommodations;
 - b. Instructional assistant support;
 - c. Occupational therapy services; and,
 - d. Specially designed instruction in social/emotional behavior, written language, and study/organizational skills?
2. Has the District followed procedures to develop appropriate IEP(s) for the Student since February 10, 2021, including but not limited to:
 - a. Properly developed present levels, based on Student-specific data;

- b. Addressing the Student's occupational therapy needs;
 - c. Addressing the Student's least restrictive environment;
 - d. Addressing the Parent's concerns regarding the Student's behavior and mental health needs;
 - e. Addressing the Parent's concerns regarding the Student's "school aversion"?
3. Did the District conduct the functional behavior assessment (FBA), for which consent was provided on January 24, 2021, within 35 school days per WAC 392-172A-03015(3)(a)?
 4. Did the District follow procedures per WAC 392-172A-03100(3) to provide meeting invitations for IEP meetings since February 10, 2021?
 5. Did the District follow procedures per WAC 392-172A-03095 to hold IEP meetings with a properly constituted IEP team since February 10, 2021?
 6. Did the District ensure Parent participation in IEP meetings, including addressing the Parent's request for records prior to meetings for the November 24, 2021 and January 21, 2022 IEP meetings per WAC 392-172A-05001 and WAC 392-172A-05190?

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. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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. The team must also consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior if the behavior impedes his learning or the learning of others. 34 CFR §300.324(a)(2); WAC 392-172A-03110.

Present Levels: IEPs must include a statement of the student's present levels of academic achievement and functional performance, including: how the student's disability affects the student's involvement and progress in the general education curriculum; or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. 34 CFR §300.320(a)(1); WAC 392-172A-03090(1)(a).

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

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). *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. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

FINDINGS OF FACT

2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was in fourth grade and was not eligible for special education services. The Student had a 504 plan.
2. On December 10, 2020, the Student's initial evaluation was completed. The evaluation group determined the Student was eligible for special education services under the disability category multiple disabilities, based on the Student's "multiple disabilities, which include autism and anxiety." The evaluation report recommended specially designed instruction in social/behavior, written language, and study/organization skills, and recommended related services in speech language pathology and occupational therapy, with audiology as a supplemental aid and service.
3. On January 21, 2021, the Parent requested an assistive technology (AT) consultation. The reason for the AT consult was described as: "[Student] is extremely reluctant to write. His only writing this remote school year has been while working with a tutor 1-1. The tutor scribes and then types up the writing for [Student] who can then copy it." The document noted a "soundfield system" would be used during direct instruction when the Student returned to the classroom and documented that the Student would have access to "Word processing, speech

to text, [Student's] written text to speech, word prediction, computer writing organization tools/software," and that there would be training for AT use and other tools "as suggested by AT" with the goal of the Student becoming "independent in completing his school writing assignments."

4. On January 24, 2021, the Parents signed consent for a functional behavioral assessment (FBA) to be conducted.

The Parents, in their complaint, alleged the FBA was not completed within the required 35 school days. The Parents explained this had a variety of negative impacts on the Student, including the delay in having data available to use for "accurate present levels and program planning" and that a timely FBA would have prevented incidents the Student has had "with his peers at school, especially during unstructured activities when staff is not focused on supporting him."

The District, in its response, noted the Parents wanted the District to collaborate with the Student's private board-certified behavior analyst (BCBA). The District stated in its response that, "due to remote schooling at the time, and because the Student's behaviors would not be observable, the school team agreed that data would be collected when school returned to in person."

5. Regarding the FBA, the District stated that the FBA was delayed for a variety of reasons, including:
 - Delaying data collection until the Student returned to in-person instruction;
 - Ensuring Parent and private BCBA input;
 - Coordination between the District and the private BCBA (who finished his FBA in May 2021);
 - Delayed collection of questionnaires from Parents and staff;
 - Challenges scheduling meetings; and,
 - The fact that the school team did not see the same behaviors at school that the Parents reported, necessitating continued discussions regarding target behavior.

The District acknowledged that the FBA was not conducted within 35 school days and stated it was striving to ensure meaningful Parent input. The District noted the Parent requested an independent educational evaluation (IEE) in December 2021, which the District granted.

6. Prior to the start of the complaint investigation timeline, three individualized education program (IEP) meetings occurred on January 8, 14, and February 3, 2021, to develop the Student's initial IEP.
7. The complaint investigation timeline began February 10, 2021.
8. During the 2020–2021 school year, the District, in its response, stated that while attendance varied at each meeting, the IEP meetings were attended by the required members of the IEP team, including the Parents, 2020–2021 assistant principal, general education teacher, occupational therapist (OT), speech language pathologist (SLP), and the special education teacher. The AT specialist attended some of the meetings when AT was at issue, as did

audiologist. The Student's outside providers and family's advocate attended IEP meetings, as well as District special education supervisors.

9. On February 10, 2021, prior to the IEP meeting, the principal sent the IEP team, including the Parents, District staff, and Parent invitees the zoom link.
10. On February 10, 2021, the Student's IEP team—including the principal, general education teacher, OT, Parents, a District director of special education (director 1), program specialist, special education teacher, instructional assistant (IA), advocate, private behavior therapist, and private OT—met and added IA support in the general education classroom to the IEP and agreed to consult with the AT specialist. The team agreed to reconvene to discuss the Student's AT needs at the next meeting. The draft IEP also included audiology support as a supplementary service.

The prior written notice from the February 3, 2021 IEP meeting indicated the team agreed at that meeting to meet again on February 10, 2021, and that the Parents gave verbal consent to excuse the SLP from the February 10 meeting. An incomplete meeting notice was included in the District's response for the February 10, 2021 meeting, which does not appear to have been provided to the Parents.

The prior written notice documenting the February 10 meeting further noted:

- The team was working with the District behavior specialist on an FBA/behavior intervention plan (BIP) for the Student.
- "The team agrees to report progress on IEP goals a few weeks after initiating the IEP, in addition to the regularly scheduled progress monitoring."
- The team agreed to revisit whether the Student required extended school year (ESY) services later in the spring.

11. Regarding the February 10, 2021 IEP meeting, the Parents stated in the complaint that they discussed counseling services at the meeting and that the District staff "claimed that mental health counseling cannot be put on [S]tudent's IEP." The Parents noted this was incorrect as the Student's sibling received mental health counseling and it was documented on his IEP.

A recording of the IEP meeting indicated the Parents were concerned about the Student's anxiety with respect to the need for counseling services, and that the Parents did not think the Student needed something like a friendship group. At the IEP meeting, a District staff person stated that they do not write counseling into IEPs¹, but they could write in a prior written notice that the Student would have access to groups led by the counselor. The Student's father also mentioned that an older student mentor could help address the Student's needs. Based on the recording, the consensus seemed to be that they would leave mental health supports open to see what the Student needed in the fall, and record this on the prior written notice.

The prior written notice did not include information about mental health.

¹ OSPI notes that based on the recording, OSPI did not know who specifically made this statement.

12. Regarding mental health needs, emails between the Parent and District staff beginning February 10, 2021 and continuing through the 2020–2021 school year included the Parent noting concerns that the Student may need more than a social group, that the Student was struggling and was in “bad shape mentally,” and that the Student was not willing to log into a peer group. The Parent noted that behavior/emotional needs, including school refusal and anxiety, were a big portion of their concerns.
13. On February 17, 2021, the Parent emailed director 1 the Parents’ dissenting opinion regarding the occupational therapy portion of the Student’s evaluation. The Parents stated the occupational therapy portion of the evaluation was not sufficient in scope to identify the Student’s needs nor did they believe it accurately represented the Student abilities. The Parents stated the evaluation did not look comprehensively at the Student’s functional handwriting, accurately document how the Student used AT, or sufficiently assess sensory needs. The Parent also resent a private occupational therapy evaluation.
14. On February 24, 2021, the principal emailed the IEP team members, including the Parents, a link for the Student’s IEP meeting.
15. On February 25, 2021, the Student’s IEP team met. According to the District’s response, at the February 10 IEP meeting, the team agreed a smaller group would meet to discuss the Student’s AT needs. The meeting was attended by two AT specialists, the Parents, the principal, the general education teacher, and the special education teacher.

An incomplete meeting notice was included in the District’s response for the February 25, 2021 meeting, which does not appear to have been provided to the Parents.

The team agreed the Student would benefit from using AT and that the Student would use an iPad when his IEP was implemented, and they discussed other AT supports and tools. The prior written notice, documenting the meeting, indicated the Student needed the AT device for “word processing, including word prediction, visual organization tools, text to speech (so he can hear his own writing), speech to text, training to use AT supports. He also needs Timer for breaks and reminders from AT device to take breaks.”

16. A March 10, 2021 email from the case manager to the principal, director 1, and program specialist noted that while the FBA was not completed, “one of the big things I need to finish the FBA is a checklist returned from his family. I am going to remind [Parents] about the checklist today.”
17. Also, on March 10, 2021, the case manager emailed the Parents the FBA checklist and a copy of the IEP, indicating the District could begin providing special education services as the FBA was being completed as soon as the Parents sign consent for services. The teacher also offered in subsequent emails to assist the Parents with filling out the checklist.

In response, the Parents emailed that they had been working on the FBA questionnaire but had not received help from the District BCBA, so were having their private BCBA assist them.

In a second email on March 11, 2021, the Parent also noted the IEP had inaccurate occupational therapy information and they thought the information was going to be “replaced with facts from our private OT evaluation report that we had previously went over with the team.”

18. On March 17 and 18, 2021, the principal and audiologist emailed regarding ensuring the Student’s classroom was set up with “soundfield.”
19. On March 19, 2021, the Parent emailed the case manager a copy of the complete Parent checklist for the FBA.

A subsequent email from the case manager and a District behavior specialist indicated the teacher had also completed the checklist.

20. In April 2021, the Parent and members of the Student’s IEP team emailed regarding scheduling a meeting to review the FBA and/or an IEP meeting. Many of the emails discussed who should be at the meeting. An April 30, 2021 email discussion between the Parent and principal included the Parent asking whether they had “confirmation from everyone that they are available” and the principal confirming they were all set.
21. In late April 2021, according to the Parent’s complaint and District records, the Student received an “accessible iPad” as part of his 504 plan. In May 2021, the Parents, school principal, and teachers were provided training. The Student was provided training on the iPad in June 2021.
22. On May 2, 2021, the Parent emailed the case manager language and recommendations from the private OT evaluation that she wanted to highlight in the IEP.
23. On May 4, 2021, the case manager emailed the principal, program specialist, OT, SLP, general education teacher, District behavior specialist, Parents, private behavior specialist, and director 1 the agenda for the May 5, 2021 IEP meeting. The agenda was as follows:
 - “Discuss results from FBA checklist (District behavior specialist); Questions and comments”
 - “Results from private behavior specialists FBA/BIP findings; Questions and comments”
 - “Decide next steps”
24. On May 5 2021, the Student’s IEP team—including the principal, general education teacher, OT, Parents, program specialist, special education teacher, Parent’s advocate, director 1, and the Student’s private BCBA—met and discussed findings from the District’s behavior specialist and private BCBA.

An IEP invitation, with a date sent of December 18, 2020, was included in the District’s response for the May 5, 2021 meeting. It does not appear the meeting invitation was emailed to the

Parents prior to the meeting.² The invitation noted the purpose of the meeting was to develop the Student's initial IEP and listed the meeting invitees by name and title.

The team discussed the findings of the District's behavior specialist and private BCBA, discussed a "review of the Skillstreaming Checklist data," and discussed possible social/behavior learning targets from the District behavior specialist, and reviewed the FBA and behavior goals that the private BCBA was drafting.

The Parents shared concerns during the meeting about the Student's challenges with transitions and why it was beneficial to have him receive services in the general education environment.

In the complaint, the Parents stated these goals were "wordsmithed" by the District's behavior staff in collaboration with the Student's BCBA and then added to the IEP. The documentation in the complaint indicated the team agreed the District and private BCBA would collaborate to draft and potentially combine goals. The Parent stated in their complaint that when they "requested to discuss which supports/services [Student] would need to learn skills outlined in the goals, the case manager removed the goals from the IEP draft."³

The team also discussed occupational therapy and updated the IEP with information about the Student's handwriting needs.

25. The May 5, 2021 IEP noted that the Student's "auditory processing disorder, autism, anxiety, and his specific learning disorder in writing" impact the Student's ability to participate in class, share ideas, and demonstrate understanding. The IEP indicated the Student required communication services, AT services, and behavior services. The IEP included goals in social/behavior (perspective taking improve from 0 to 5 times in 30 minutes, listening skills improve from 0 to 5 questions/comments in 30 minutes, and flexible thinking improve from 0 to 3 out of 4 opportunities), study/organizational skills (task initiation/self advocacy improve from 0 to 3 out of 4 trials), and written language (planning/pre-writing tool improve from 0 to 9 out of 10 trials, on-topic writing improve from 0 to 9 out of 10 opportunities, and editing improve from editing 0 to 9 out of 10 mistakes), with progress reporting at the trimester. The IEP provided the Student with the following specially designed instruction, related services, and supplementary aids and services:

² OSPI notes that versions of IEP meeting invitations were sent to the Parents when the District emailed draft versions of the IEP, but that invitations did not appear to be regularly emailed prior to IEP meetings.

³ A draft version of the IEP did contain two additional behavior goals related to non-preferred tasks/social behavior skills and identifying the Student self-identifying his performance toward a target. A June 4, 2021 email from the case manager indicated that draft goals had accidentally been uploaded into the IEP, and because these goals had only been drafted and discussed by the case manager, District behavior specialist, and private BCBA, and not considered by the whole IEP team, the goals were not actually ready to be added to the IEP. The case manager stated the intention "was to discuss the new goals at the same time that the team met to discuss the FBA and BIP." The Parent, in her reply to the District's response, disagreed, stating the three proposed behavior goals had already been discussed at the May 5, 2021 IEP meeting.

- Speech language pathology: 120 minutes per month (provided by an SLP in the general education setting)
- Occupational therapy: 300 minutes per year (provided by an OT in the general education setting)
- Social/behavior: 30 minutes per week (provided by special education staff in the general education setting)
- Written language: 20 minutes, twice per week (provided by special education staff in the special education setting)
- Study/organization: 10 minutes, twice per week (provided by special education staff in the special education setting)

The IEP noted the Student would spend 96.6% of his time in the general education setting. The IEP included numerous accommodations and modifications.⁴ The IEP included 60⁵ minutes per year of audiology support as a support for school personnel to support accommodations related to the Student's auditory processing disorder and IA support for 30 minutes, four times per week in the general education setting.

26. Between May 6 and 7, 2021, the District behavior specialist, case manager, and private BCBA emailed, discussing the behavior goals. The private BCBA indicated he would gather data for goal baselines.

27. On May 21, 2021 (and in subsequent emails), the Parent emailed the case manager and IEP team with several items related to the IEP, summarized as follows:

- Occupational Therapy: The Parent wanted the findings and recommendations from the private occupational therapy evaluation listed in the IEP, not just a reference to the report.
- FBA/Behavior Goals: The Parent stated she was waiting to hear back from the private BCBA and asked a question about a curriculum.
- AT: The Parent disagreed with listing AT services and devices as a modification, stating AT was more properly listed as a supplementary aid and service.

28. On May 25, 2021, the Parent emailed the case manager and IEP team, noting the added behavior goals looked good but stated "we are just unsure how will those be supported by services." The Parent asked whether they needed a team meeting to talk about "what services will be needed to support those added goals."

The Parent further provided in their reply to the District's response that the FBA was completed on May 5, 2021, and three behavior goals were proposed based on the FBA. The Parents stated:

We asked to meet with the team to decide what support [Student] would receive for those goals and the District's response was that we will wait until fall. We did not agree with this

⁴ The accommodations and modifications are delineated in Exhibit A.

⁵ OSPI notes that the IEP included 90 minutes per year of audiology support in the "program accommodations/modifications and support for school personnel" section of the IEP, but 60 minutes per year of audiology support on the service matrix. OSPI recommends the Student's IEP team clarify the amount and correct the IEP as needed.

approach. We knew the impact of [Student's] rigidity and his need for support during transitions, especially those after school breaks.

29. On May 28, 2021, the Parent emailed the case manager and assistant principal and stated she would be ready to sign consent for special education services if they receive a prior written notice, documenting the plan for the following:

The team is planning to meet to discuss what support may [Student] need for the three additional/behavior goals...Private OT findings and recommendations were not included in the IEP and the OT report is attached to the IEP – we can discuss this later...Parents request to record AT...in Service matrix as opposed to Modifications – and explain why this is not done...[and] a record that [Student's] baseline will be collected and the IEP amended in the next couple of weeks.

The case manager responded, stating they could adjust the AT to be a supplementary aid and services "as long as it does not increase or add minutes to the matrix," they could meet in fall 2021 to discuss the FBA/BIP and how to address the goals, and noted, "We have been over the OT portions in past prior written notices and the team has considered and is addressing some of the pieces within the writing portion of the IEP."

30. On June 8, 2021, director 1 emailed the Parents, stating the District stood "prepared to serve...[the Student's] Special Education services as detailed in the...IEP provided to you earlier. As explained in the previous Prior Written Notice...we can revisit [Student's]...FBA and...BIP in Fall 2021." The District stated that it could not move forward with implementing the IEP until the Parent's provided initial consent for services.

The Parents responded, asking for a meeting prior to the end of the school year to discuss the "plan that is needed to support the goals proposed and already discussed by the IEP team in our May 5th meeting."

31. Also, on June 8, 2021, in an email discussion between the Parent and principal, the Parent noted she thought the "FBA is finished and three proposed behavior goals came out of it."

32. On June 11, 2021, the Parents signed consent for the provision of special education services.

33. A June 14, 2021 prior written notice, documenting the development of the initial IEP, noted the Student's IEP team had met between January 8 and May 5, 2021 to develop the initial IEP. The prior written notice recorded that:

The team agrees to implement an FBA/BIP and this can be done outside of the IEP. The team agrees to the initial IEP with current goals. Should goals change as the FBA/BIP is developed, this IEP can be amended as necessary. The [District] members of the IEP team are ready to serve [Student] while the FBA/BIP continues to be developed. The team will reconvene to discuss the BIP when finished. When the team reconvenes for the FBA, the team can consider moving AT to Supplementary Aids and services at that time, with no increase in service minutes.

34. With respect to the IEP meetings, the District stated in its response that the Parents received an invitation for each of the meetings, and often the meeting was scheduled and an agenda

developed at a prior IEP meeting and documented in the prior written notice. The District also noted that throughout the IEP development, the Parents provided “significant input regarding the development of the IEP emails correspondence and at meetings, including through their outside providers and advocate, who participated in the IEP meetings.” Further the District stated, “While the school team considered the input and agreed with some of the Parents’ suggestions, it did not agree to all.”

The District stated, “although the IEP development process has spanned various months and consisted of six meetings prior to receiving consent, the team largely developed the IEP within 30 days from the initial evaluation.” The District stated the team continued to meet to address the Parents’ ongoing concerns.

Further, the District also noted that during the IEP meetings, and “through ample communication occurring between the IEP meetings - the team has considered the Student’s needs, considering Parent input, as well as outside information.”

35. On June 16, 2021, an iPad (from the special education department) was delivered to the school for the Student.
36. According to the District’s response, in the last week of school, the Student’s case manager “began serving the Student and attempted to collect baselines of the Student’s goals – as she had been unable to effectively do so during the prolonged development of the IEP when goals were shifting” and explained to the Parent that “she would need to continue data collection in the fall to gather enough data, as only five school days were remaining.”
37. The District’s last day of school was June 18, 2021.

Summer 2021

38. In its response, and emails included in the response, the District noted that prior to the start of the 2021–2022 school year, the Parents, “expressed concerns, alleging that the team did not finish IEP development in the spring – particularly with social/emotional goals – and that baseline data was lacking.” The District stated that the “Parents also exchanged various emails with District staff regarding their concerns about the transition to the upcoming school year and summer services.”

The Parents requested an IEP meeting prior to the school year starting, but due to back-to-school logistics, the school team informed the Parents that a full IEP team meeting would need to occur after the school year started.

39. On August 20, 2021, the Parents and their advocate met with the new principal and assistant principal of the Student’s school, along with director 1. At the meeting, the Parents requested compensatory education and recovery services, and they discussed the Student’s needs.

Emails following the meeting indicated the District sent a compensatory education offer that was further discussed by email. Additionally, the Parent noted they needed to “finish the

development of [Student's] initial IEP" as the Parents did not agree with the current IEP as written, in part because the FBA had not yet been completed.

40. On August 30, 2021, the Parent met with the District BCBA to discuss the FBA, social/emotional and mental health challenges, and writing. The Parent stated they discussed the Student's history of elopement and the Parent's safety concerns.

The Parent stated in the complaint that she expressed concerns about the Student being exhausted and uncomfortable on the first day of school, noting she was "worried that he will leave the school grounds." In her complaint, the Parent stated, "This information did not trigger a meeting before the school started or even after and it was not recorded on the district's FBA report provided to the parents. The safety concern and other valuable information was dismissed and lost."

Earlier emails from the Parent in spring and summer 2021 included the Parent documenting her concerns about the Student eloping, that the Student was logging out of meetings with the IA, "which is the same as [the Student] leaving the classroom...If [Student] was in person, instead of logging out of a meeting, he would elope."

41. On August 31, 2021, the Parent and Student met with the general education teacher and received a tour of the school from the principal.

2021–2022 School Year

42. The District's 2021–2022 school year began on September 1, 2021.
43. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services, was in the fifth grade, and his June 2021 IEP (finalized in May and consent for services signed in June 2021) was in effect.
44. Emails from early September 2021 indicated the Parent was picking the Student up early from school to "[phase] him into the school schedule" during the first week of school. The Parent also requested a visual schedule.
45. On September 8–10, 2021, the case manager, SLP, and general education teacher emailed, discussing how the SLP could provide instruction in the general education setting.

Other emails were exchanged with the OT in early to mid-September regarding scheduling sessions. And the AT specialist also emailed to check in regarding the Student's iPad. Emails indicated the Student was generally resistant to using the iPad.

46. A September 18, 2021 email from the Parent to the case manager noted the Student was having difficulty getting to school on time due to anxiety, had only met with the SLP once, did not have a visual schedule, and while he did go to his writing group in the resource room, the Student stated he was not getting any support (other than the teacher) in the general education classroom.

The case manager responded, noting they were seeing positive things with the Student at school, stating, “[Student] is talking to me and is willing to take suggestions when he is in a writing slump. He is producing writing in class.” The case manager noted she had seen the IA talking about writing with the Student during class, that the District BCBA was supporting data collection for the FBA, and stated they could schedule an IEP meeting.

47. On September 21, 2021, the case manager emailed the IAs and teacher to collect data on the Student’s goals. The case manager also noted they were “hoping to have an FBA done by the end of Oct.”

48. A September 30, 2021 email from the Parent to the District noted the Parent’s concern that the Student was struggling to transition back to being in school. The Parent stated the Student says he “hates schools, he is bored” and he “cries frequently.” The Student was having trouble sleeping and getting to school on time nearly every morning. The Parent also stated the school had not yet “collected baselines in any of [Student’s] IEP goals” and that the “initial special education evaluation and IEP development is not yet finished, with FBA still missing.”

49. On October 1, 2021, the general education teacher emailed the Parent and in part noted the Student seemed happy and engaged at school, he was raising his hand and participating, and “is doing really well academically – his first story is wonderful.” The teacher stated, “I have no doubt that it is not all perfect for him, but from my perspective I am seeing a lot of positives.”

The Parent responded, noting that, that was not what the Student was sharing with them.

50. On October 3 and 12, 2021, the Parent requested accommodations for testing be added to the IEP. The IEP team, including the Parent, agreed to amend the IEP to add the accommodations without a meeting and the IEP was amended on October 20, 2021.

The October 20, 2021 amended IEP also included updated baselines for the Student’s goals as follows (updated baseline in bold):

- Social/behavior: Perspective taking improve from **2** to 5 times in 30 minutes; listening skills improve from **2** to 5 questions/comments in 30 minutes; and, flexible thinking improve from **1** to 3 out of 4 opportunities
- Study/organizational skills: Task initiation/self advocacy improve from **2** to 3 out of 4 trials
- Written language: Planning/pre-writing tool improve from **3** to 9 out of 10 trials; on-topic writing improve from **5** to 9 out of 10 opportunities; and, editing improve from editing **5** to 9 out of 10 mistakes

51. In the District’s response, it noted the “team has collected significant data, and updated the Student’s baselines after the Student returned to school in the fall.”

52. On October 4, 2021, the Parent emailed the case manager with data regarding the Student’s challenges getting to school on time and the Student’s lack of engagement with peers during recess.⁶

⁶ The Parent sent similar emails with data about the Student’s challenges getting to school on time and other updates on October 8, 18, and 25, November 1, 5, and 13, and December 13, 2021.

53. Also, on October 4, 2021, director 1 proposed a meeting to discuss the Parents' request for compensatory education and recovery services. The Parents stated they did not think a meeting would be productive and shared concerns about the FBA and data collection.
54. On October 5, 2021, the Parents emailed the District, noting that "IEP goals baselines [need] to be collected...[and] We have not received an updated IEP that includes baselines." The Parents again noted the FBA was not complete.
55. On October 16, 2021, the Parent emailed the case manager and in part highlighted there was a discrepancy between what teachers were seeing at school and what the Student shared about school when he got home (e.g., the Student stating that "school is garbage" and the teacher saying the Student had a good week). The Parent also asked about whether there was mental health support for the Student.
56. On October 17, 2021, the Parent emailed the OT regarding the barriers the Student was facing in accessing AT tools and strategies. The Parent stated, "[Student] has been refusing to use the accessible iPad. He is rigid and takes a long time to adjust to new things and routines. It's still worth pursuing teaching him compensatory strategies like AT/AAC."

The OT responded that the Student preferred to use a laptop as to not stand out from other students and asked the AT specialist to send "[Parent] a release of information to review the AT evaluation from [private provider]? Does [Student] have an [District] AT evaluation in place?...Either way, we need a team AT meeting to help set up [Student's] AT tools and decide if all applications need to be transferred to a laptop."

The OT also asked other school staff how they integrate AT support; for example, the OT asked the general education teacher whether the Student was "using AT in class and can you assist with more consistent use? I work on AT during each session with [Student], but it sounds like we need a team approach/coordination to get the ball rolling."

57. On October 18, 2021, the Parent emailed the case manager and asked, in part, that the case manager send the IEP with updated baselines.
58. On October 25, 2021, the Parent emailed the case manager and principal, and among other things, asked the case manager and teacher to send her a copy of the Student's visual schedule. In a subsequent email the same day, the Parent also stated that the IEP the case manager recently sent did not include the Student's updated baselines.

The general education teacher responded with the Student's classroom schedule. The Parent replied that the Student said he had never seen the schedule the teacher sent. The case manager later responded and stated she added the Student's resource room sessions to the Student's classroom schedule. In a subsequent email, the Parent stated the schedule was not accessible to the Student.

In another October 25, 2021 email to the case manager, the Parent noted the Student has “an accommodation of weekly school-home communication log” and the Parent noted they had not been receiving a communication log.

59. On October 26, 2021, the Parent emailed the general education teacher and stated the Student reported he was not receiving IA support in his general education class.

The teacher responded that he did not have a specific IA assigned to his class, although we “have had tutors.” The teacher did note there was one IA in his room at a time and the “different IAs rotate through depending on the schedule they have set up. That is why [Student] is seeing more than one IA around.”

The case manager also responded that IAs do spend time in the Student’s general education classroom and that the IAs are aware of the Student’s IEP, needs, and services. Subsequent emails between the Parent and case manager discussed other questions that the Parent had regarding the IAs and IA support for the Student. In part, the Parent continued to state that the Student reported no IAs were working with him on writing.

60. On October 27, 2021, the case manager emailed the general education teacher, IA, and other District staff regarding support for the Student in class. The case manager noted the Student had IA support in his IEP and that this can “be either in writing, study or social skills” and “in class I think it would be great if someone could notice if [Student] is getting started with writing and check in with him if he struggles.” The case manager also suggested the IAs check in and provide support at lunch or recess as well.

61. On November 1, 2021, the Parent emailed the case manager and District BCBA, and in part noted that at a February 10, 2021 IEP meeting, they asked for counseling for the Student. The Parent stated, “We were told that counseling would be recorded on [the prior written notice] but it is not.” The Parent also asked what was happening with the FBA.

In a separate email to the case manager, the Parent asked for a copy of the IEP with updated baselines, documentation of the specially designed instruction that has been designed for the Student’s IA to deliver, and an updated schedule with the times of the Student’s services.

62. On November 5, 2021, the case manager emailed the Parents a progress report. The case manager provided information about the Student’s specially designed instruction, noting that he was working on writing and study/organization in the general education classroom and resource room, with IA support during writing time. The Student was also working on social skills during class time and lunch/recess, and that there was an IA at lunch and recess daily. The case manager noted the SLP was working with the Student on social skills. The case manager stated it may be helpful to add some “pull-out time for social skills on his IEP.”

- Task initiation/self-advocacy – Significant progress made – “He is getting started on his assignments during the current fiction writing unit on 3 of 4 opportunities. One time he got ‘stuck,’ on a story. It took [Student] a couple of days of thinking and talking with his teacher before he was ready to start a new piece.”

- Writing planning – Some progress made – “The class has been working on fiction writing. [Student] is able to do the necessary writing to complete his assignments in science.”
- Writing on-topic – Significant progress made – “[Student] has been used both story maps and story mountain for the current class until on fiction writing.”
- Writing editing – Significant progress made – “[Student] has finished editing assignments in the classroom. [Student’s] first drafts are usually well organized and have few mistakes.”
- Perspective taking - Some progress made – “[Student] is able to identify unexpected behaviors to an adult partner. This goal was written before the service matrix was completed and it was expected he would be in a stand alone social skills group. The IEP team is able to gather data when [Student] notices unexpected behavior.”
- Listening skills – Some progress made – “This goal was written before the service matrix was completed and it was expected he would be in a stand alone social skills group...SLP is working with [Student] in the general education classroom and has seen some progress with this goal. Progress includes [Student’s] curiosity to find things in common with peers, surprise and interest in continuation of finding commonalities with his therapist, categorizing friends based on who might be more receptive to initiation in play/conversation, specific language for initiating and engaging with peers, and creating plans for aforementioned initiation and engagement. Changing the location of services will allow some time for 1:1 conversations, treatment approaches, and role-playing activities that will help facilitate direct learning and progress toward this goal, in addition to allowing for naturalistic treatment and observation of generalization in the context of the general education/recess/lunch setting.”
- Flexible thinking – Some progress made – “This goal was written before the service matrix was completed and it was expected he would be in a stand alone social skills group. However, [Student] has been doing well negotiating his way during the group games with his classmates.”

63. Also, on November 5, 2021, the Parent responded to the email with the progress report, noting that the Student’s “baselines were not collected and therefore the progress report shows that [Student] made significant progress, which is inappropriately calculated with baselines data missing. His baselines were not at 0 value to begin with.” The Parent again asked for an IEP with updated baselines, documentation of the specially designed instruction that was designed for the IAs to deliver, and a visual schedule “with times that the IA services will be provided.” The Parent also requested the data collected and used for progress monitoring.

64. Also, on November 5, 2021, the case manager emailed the District BCBA regarding the data for the FBA, noting they had not seen negative social interactions at school, elopements, or unsafe behavior. The case manager also noted there was only one “official” tardy, although the Parent had records of “at least 12 tardies of 5–25 minutes late.”

65. On November 6, 2021, the case manager emailed the Parents and other members of the IEP team in response to the Parent’s November 5, 2021 email. The case manager stated the following:

We have been collecting data since the beginning of his IEP in June. [Student’s] performance has been steady. If I were to update his baselines, they would be as they are on the progress report I sent on Thursday. I can use that interim report as a baseline. [Student] is writing, revising and turning his assignments in. He’s negotiating the social turf of 5th grade gracefully...IAs are trained to layer the in the [specially designed instruction] that students need. For example, the classroom teacher may teach a lesson about what

makes a good story, then an IA may help the student use of create an organizational tool (one of the [S]tudent's IEP goals) that will reinforce the lesson the teacher just teach and help the student initiate and complete a writing assignment (another of the [S]tudent's IEP goals)...

The case manager noted that because the IAs change, she could not include their specific times on a visual schedule. The case manager stated, "barring emergencies, there is an IA in [Student's] classroom during writing for more than 120 minutes per week." The case manager also shared her data collection tool and stated the progress related to writing was based on the Student's writing samples, suggesting the Student could help select some to share.

66. Regarding the November 2021 IEP meeting, the case manager proposed earlier in the fall scheduling a follow-up IEP and FBA meeting in November, to provide time to collect data in October, after the Student had settled back into school. The case manager followed up on her request for potential dates in mid-October. The Parent provided a poll to District staff and the Student's private providers, proposing various times during the school day. After the parties exchanged multiple emails regarding scheduling, the meeting was ultimately scheduled for November 24 from 4:30–6 pm to accommodate the Parents' schedules.

67. On November 16 and 23, 2021, the case manager emailed the Parents a copy of the draft FBA.

68. Also, on November 16, 2021, the principal emailed the Parent, confirming the time for the IEP meeting, noting she sent a separate Teams invite, and including all the members of the IEP team on the email.

69. The District's response included a November 18, 2021 "notice of meeting" for the meeting schedule for November 24, 2021. The notice included the purpose of the meeting—"Functional Behavioral Assessment"—and listed the meeting invitees by name and title. The contact attempt report indicated the Parents were contacted on November 18 via email, although it does not appear the notice of meeting was sent prior to the meeting.

The District's response also included a meeting notice for a meeting on November 21, 2021, the purpose of which was listed as: "Other: Determine if an OT evaluation is needed." There is no email in the record indicating this meeting notice was sent to the Parents.

70. On November 23, 2021, the Parent emailed the case manager, principal, and other members of the IEP team a Zoom link for the IEP meeting. The Parent also sent her agenda items for the meeting, which included discussing the FBA; data, goals, and services; counseling, occupational therapy needs, specially designed instruction/service delivery, AT updates and changes needed.

71. Also, on November 23, 2021, the principal emailed and resent the Parents the agenda and Zoom link for the IEP meeting the next day. The agenda included introductions, review of data, the FBA, and occupational therapy. The principal also stated:

[Parent] you requested the below to be a part of the agenda, please see responses in **bold.**

Counseling – **[Parent] has stated need for counseling services due to anxiety at home. At school, the team has no relevant data to support the need for counseling at this time school setting to provide FAPE.**

[Specially designed instruction]/Service Minutes – **Please see the below matrix. To support [Student] we are following what is happening in his general education setting and pulling him to ensure [Student] is progressing towards his goal.**
[Service matrix from IEP included in email.]

AT Updates – **[Student] has opted out of assistive technology. We can revisit if and when we have a tool that works better.**

(Emphasis in original).

In response to the principal’s email, the case manager emailed the latest draft of the FBA.

The Parent also replied, providing feedback on the agenda and advocating for additional services and supports (counseling) for the Student.⁷ The Parent included information and historical data that she said supported the Student’s need for counseling.

72. On November 23, 2021, the Parent met with the SLP and general education teacher to discuss the Student’s speech services.

73. Later, on November 23, 2021, the Parent sent several emails related to records and reiterated these requests on November 24, 2021 prior to the IEP meeting:

- Email to the case manager, requesting all records the FBA was based on
- Email to the records department, requesting the Student’s attendance report⁸

The District acknowledged in its response that it did not provide the records prior to the IEP meeting. However, the District stated that given the short turnaround and based on the fact that the Parent had her own attendance data and indicated the District’s attendance report was inaccurate, the District stated it did not believe the failure to provide the record impacted the Parent’s ability to meaningfully participate in the IEP meeting.

74. On November 24, 2021, the Student’s IEP team—including the Parents, their advocate, the principal, the special education teacher, the general education teacher, the OT, the SLP, a District program specialist, director 1, and an “outside autism specialist”—met.

⁷ In her complaint, the Parent stated neither the principal nor any school team members ever “clarified what data would be required to support the need for counseling.” The Parent further stated that the “fact that the IEP team already agreed in the February 10th, 2021 IEP meeting that [Student] requires mental health counseling to address his challenges including social anxiety and social communication to access FAPE.”

⁸ The District noted in its response that on November 23, 2021, the Parent “provided the school team ‘[Student’s] historical attendance data,’ attaching the Atlas Attendance Report and indicated the Student’s attendance was not accurately recorded on the Atlas Attendance Report, but ‘fortunately, I have been keeping record of what time we get to school.’”

The Parent requested the AT specialist attend, but the AT specialist was unavailable at the time of the meeting. The AT specialist stated she would be happy to conduct an AT reconsideration meeting with the team to further discuss the Student's technology needs.

The team discussed the FBA and the Student's behaviors. The FBA report included in the District's response noted the Student's strengths, data collected, contributing factors, and target behaviors of lateness to school. The FBA did not recommend a BIP but did include recommended replacement behaviors to be taught and other strategies. According to the District:

The school team indicated that other than slight tardiness, they did not see the same behaviors at school that the Parent reported. As such, the FBA is focused on tardiness and not the other behaviors identified by the Parents, as they have not been seen by the school in a way that impacts the Student's learning or the learning of his peers. The Parents expressed concerns about the lack of specificity in the FBA and indicated they would provide additional feedback following the meeting.

The prior written notice, dated November 24, 2021⁹, noted that the Parent's requested an "occupational therapy revision" and that the team considered the request. The notice documented that the Student had been evaluated by a District OT in December 2020, and the Student had been receiving occupational therapy services as a related services since his initial IEP was finalized and implemented. The prior written notice indicated the team had rejected the Parent's request because the:

most recent IEP reflects current occupational therapy data and data during OT sessions show steady grade-level progress. Therefore, the therapist does not require additional data to provide therapy. Needs related to sensory processing differences that impact him in his school setting have not changed, so a new occupational therapy evaluation is not needed at this time.

The notice further indicated the OT had been working with the Student on writing paragraphs with text-to-speech, word prediction, and handwriting. The OT noted the Student "handwrites paragraphs at grade-level (in terms of word production) without assistive technology" and thus the Student "generally declines text to speech and word predication given he already handwrites or types at grade level." The notice also indicated that no sensory issues had been observed that impacted academic access.

A prior written notice, dated December 3, 2021, noted the team would need to continue discussing the FBA and that the family "requested to see the raw data used as a basis for the draft FBA." The prior written notice further stated:

The family requested District Attendance data and more information on some negative interactions that [Student] may have had with peers. The family was concerned about lack of specificity in the FBA. The family was asked to send an email with concerns bulleted out.

⁹ The prior written notice indicated the team ran out of time at the November 24, 2021 IEP meeting to discuss occupational therapy and stated that "a new Prior Written Notice will address the parent's OT questions given the parents had several other issues to address in the upcoming continuation meeting on 1/21/22." Thus, it is not entirely clear when the occupational therapy discussion took place.

The team had hoped to discuss OT at this meeting, but ran out of time. The team will meet again. The team intends to have OT at the top of the agenda. The first week of February was suggested as a possible meeting date...

On 11/29/21, the family sent an email with their concerns about the FBA, which is attached. The school team reviewed the requested changes and made minor edits to the FBA based on their concerns. Another meeting needs to be scheduled to discuss the family's questions about the FBA.

75. The District was closed for a holiday on November 25 and 26, 2021.

76. On November 29, 2021, the Parent emailed the case manager and teacher, and requested the following:

- That the IA written instruction services be added to the Student's schedule.
- That the Student receive his visual schedule.
- That the Parents get "documentation of what has been designed for [specially designed instruction] for [the Student] for the IAs to deliver?"
- Whether the "Skill Streaming" curriculum was being used.
- That the Parents get copies of the Student's written work, including drafts.

The Parent also included feedback on the FBA. The Parent also sent a second email to the case manager and director 1 with their notes on the FBA (questions and feedback). The case manager forwarded the Parent's FBA feedback to the District BCBA.

Later, the case manager forwarded the email from the Parent to the principal, program specialist, director 1, SLP, and OT, noting she had not responded to the Parent because she had "answered most of the questions in previous emails or in the teacher-parent conference."

77. On December 4, 2021, the principal emailed the Parents the data requested at the meeting (District attendance data, case manager data from classroom observations, Parent attendance data, and information from the general education teacher). The principal noted they still need to meet and finalize or discuss occupational therapy and the FBA.

78. On December 10, 2021, the Parent emailed the case manager and again requested the "SkillStreaming" lessons that had been used with the Student. The Parent also asked about adding the three social/behavior goals drafted by the private behavior specialist and District behavior specialist to the IEP. The Parent asked again for the "updated IEP with baselines."

79. Also, on December 10, 2021, the case manager emailed the general education teacher and SLP "skillstreaming lessons" that had been talked about during some of the Student's IEP meetings. The case manager stated that, "during the IEP progress, I was thinking I would be doing a weekly pull-out social group with [Student] but his family and providers were against it." The case manager asked if any of the lessons would be appropriate for "your whole class as part of your SEL lessons" and if "[general education teacher] wanted to use a lesson for SEL, I could follow up with the written portion in writing group." The case manager also asked if the lessons would be appropriate for the SLP's sessions.

The SLP responded that the lessons were great resources and that she could use them in sessions. The SLP asked if there were any plans to create a social group.

80. On December 17, 2021, the case manager emailed the Parent's the Student's progress report, which report progress on IEP goals as follows:

- Task initiation/self-advocacy – Significant progress made – “[Student] continues to start his assignments in class and is on track to meet this goal.”
- Writing planning – Some progress made – “[Student] is working on note taking his biography project. So far his class has not been asked to use a graphic organizer.”
- Writing on-topic – Some progress made – “Class has not used organizer since the last update on 11/2/21.”
- Writing editing – Significant progress made – “[Student's] writing continues to be organized with few mistakes.”
- Perspective taking – Some progress made – “[Student] has been negotiating most situations well this term. SLP has provided [Student] with strategies for perspective-taking to determine what is and is not considered expected and unexpected behavior.”
- Listening skills – Some progress made – “SLP has provided [Student] with a visual to help him make on-topic, follow-up questions and comments. He benefits from being provided with leading information and positive verbal feedback when he does ask questions during conversation. Although a 30 minute conversation has not been reached, [Student] is able to ask 2 questions independently in a 15 minute conversation about a non-preferred topic with clinician. He has been observed speaking with peers in the general education classroom (e.g., with a partner in class about a lesson) and at lunch/recess.”
- Flexible thinking – Some progress made – “This goal was written before the service matrix was completed and it was expected he would be in a stand alone social skills group. [Student] is able to deal with problems as they arise most of the time this term.”

81. The Parent responded to the case manager's email with the progress reporting, requesting the data used for progress monitoring and noting the progress was inaccurate as the baselines on the initial IEP were never updated.

82. On December 18, 2021, the Parents emailed the program specialist and requested an independent educational evaluation (IEE) in the area of behavior, “in particular the FBA and occupational therapy.”

83. On December 19, 2021, the District sent the Parents a final version of the FBA and a weekly update that contained information about scheduling a meeting in January 2022, an update from the OT, and other updates.

In part, the OT noted that her services to the Student were as follows:

[Student] is Support to Personnel or consultation to staff, not direct services on the Service Matrix. Consult services are listed under Modifications/Accommodations page. I often see my student with consult services in-person, especially when students are new to me. The current level of services is appropriate; he is a pleasure to work with.

84. Regarding the FBA, the Parent's stated in their complaint that the Student:

Has been late to school due to his disability impact. When parents pointed out that this is an area to be addressed and what [Student] is sharing about his school aversion, their input was repeatedly dismissed. The...FBA the district finally conducted did not target several areas of concerns. Instead, the focus was on the impact symptom of the underlined issues. The District recently granted an IEE to address [Student's] behaviors. Initially, they allowed an FBA only. Then they expanded the IEE to OT. Behaviors are a reflection of what is happening under the surface, including mental health challenges and the IEE needs to include that.

The District stated, regarding the FBA, that the team:

Properly considered the Parent's concerns regarding the Student's...mental health, but based on data and observations of the Student at school, ultimately did not agree with the Parents on all points. Moreover, while the school team does not see 'school aversion,' as described by the Parent, they developed a FBA to address tardiness. Since developing the FBA, the District has granted the Parents' request for an IEE.

The District stated, "at this point, the District is waiting for the IEE to be completed before making additional revisions to the FBA."

85. The District was on winter break from December 20, 2021 through January 2, 2022.

86. Documentation in the complaint, the District response, emails, and the Parents' reply to the District response indicated the Parents continued to raise concerns about data collection, occupational therapy, AT, IEP implementation, and the Student's mental health needs in December 2021 and January 2022.

The District stated in its response that, "In an attempt to consolidate communications and minimize confusion, the [school] team began emailing the Parents through a weekly email on Fridays which is sent through [principal]."

87. On January 4, 2022, the Parent emailed the principal regarding records as follows:

I first requested records related to progress monitoring and what [specially designed instruction] has been designed for [Student] on October 28th. As you know, we had an IEP meeting on November 24th. We have not yet received data sheets, just observations and notes. It sounds like there has not been data collected from what [case manager] said in her email today. This is unusual and I would like you to be aware of this.

88. On January 7, 2022, the principal emailed the Parents with updates and attached the attendance records and the skill streaming summary. The principal noted an IEP meeting was scheduled for January 21, 2022. And the email provided an update regarding occupational therapy—including clarifying that the OT was providing a related service and apologizing for the miscommunication—stating that occupational therapy could include direct and indirect services and noting that "yearly services fits your son's needs well" as he "was late several sessions in the morning" and the "yearly services insured your student was seen for 30 minutes each month." The email also provided an update on the FBA, the skillstream assessment, quarterly data, and a weekly communication log (noting the general education teacher sends a communication every Friday and the case manager communicates regularly).

The principal also stated the case manager was “happy to amend [the Student’s] IEP to add a pull-out social skills group and teach the skillstreaming lessons.” The case manager proposed adding 30 minutes per week in the special education setting for a social skills group.

89. In their complaint—regarding the offer of a pull-out social group—the Parent stated that, “Decisions are often predetermined without the team reviewing the data and discussing how to best serve [Student] to ensure the least restrictive environment or considering that [Student] struggles with transitions as well as mental health. Removing him from his natural environment raises his anxiety.”
90. On January 16, 2022, the principal sent the Parents the weekly update email—copying the other members of the IEP team—which included an IEP meeting invitation with meeting agenda for the January 21, 2022 IEP meeting. The meeting invitation included the names and titles of invitees and stated the purpose of the meeting was to “Document Parent Concerns; Document Goal Baselines.” The email also included an update from the case manager about the Student’s writing and that he used the iPad for a class assignment, a statement that the IEP would be opened to add the baseline data, and a request that the Parents clarify what they were looking for with the weekly communication log accommodation.
91. On January 18, 2022, the Parent requested records from the SLP and OT, and requested a meeting with the OT prior to the IEP meeting. The Parent also provided information about what they had discussed in past about a weekly communication log.

The Parent stated and the District confirmed in its reply that the Parent did not receive the requested SLP and OT records prior to the January 21, 2022 IEP meeting. The Parent stated this limited her ability to participate in the special education process.

According to the District’s response, the principal “attempted to gather the records before the meeting, but was unable to do so due to confusion surrounding production (she requested the logs from special education records, which informed her that all records had already been provided to the Parent).”

92. On January 21, 2021, prior to the IEP meeting, the OT responded to the Parent and provided answers to the Parent’s questions regarding occupational therapy.
93. On January 21, 2022, the Student’s IEP team—including the Parents and their advocate, the Student’s private OT, principal, general education teacher, special education teacher, OT, OT supervisor, SLP, BCBA, a District special education director (director 2), and a District special education supervisor (supervisor)—met.

According to the District’s response and prior written notice, the team discussed service delivery, accommodations, behavior needs and counseling, AT, occupational therapy, and scheduling/next steps. Regarding occupational therapy, the prior written notice indicated the OT prepared answers to the Parent’s questions “before the meeting by 8am on 1/21, given the questions were asked on 1/20 at the end of the school day. However, the principal

requested the document saved for the weekly 'Friday Family Update.'" The OT also answered questions from the Parents during the meeting. The notice indicated a portion of the team met again on January 31, 2022¹⁰ to discuss occupational therapy services: location and duration.

The team agreed to update the IEP with the Parent's written concerns, which the Parents would send following the meeting.

The team proposed adding 30 minutes of social/emotional specially designed instruction in the special education setting to address the Parent's concerns about the Student's behavior and anxiety. The Parents reject this offer due to concerns about the services being offered in the special education setting.

During the IEP meeting, the team agreed that in-person instruction would be specified in the Student's IEP. This was reflected as follow in the prior written notice and IEP¹¹:

Regarding the accommodation of in-person school: The team acknowledges that student had difficulty accessing remote instruction and makes more progress through in-person learning. As such, if the school or classroom moves to remote instruction for an extended period of time due to health-related concerns, the student will receive [specially designed instruction] in-person on a modified schedule, if the health condition of student and staff allow for it and if in accordance with guidance from the Department of Health and OSPI. Due to the unpredictability of COVID-19 and related guidance, the school may not always be able to provide in-person [specially designed instruction] for all qualifying areas, and recognizes that in this situation, the team will consider whether recovery services and/or comp. ed. is required.

Later, on February 15, 2022, the Parent emailed the case manager feedback about the prior written notice and meeting. The Parent noted they ran out of time to discuss testing accommodations, AT (the AT specialist was not at the meeting), and occupational therapy services. The Parents provided their wording for a prior written notice.

94. The January 21, 2022 amended IEP continued to included goals in social/behavior (perspective taking improve from 2 to 5 times in 30 minutes, listening skills improve from 2 to 5 questions/comments in 30 minutes, and flexible thinking improve from 1 to 3 out of 4 opportunities), study/organizational skills (task initiation/self-advocacy improve from 2 to 3

¹⁰ The prior written notice indicated the attendees at the January 31, 2022 meeting were the principal, OT, Parent, special education teacher, parent advocate, OT supervisor, Student's private OT, director 2, and supervisor.

¹¹ The Parent alleged that this was not what the team agreed to and that the special education director stated, according to the complaint, that he would "check with the district what the accommodation wording should be." The Parent stated, "This should be a team decision. We suggested wording in an email prior to the [prior written notice] issuance." The Parents, in their reply, stated they wanted the accommodation to read: "If the school or classroom moves to remote instruction for, the student will receive education, including SDI in-person. The team will meet and consider whether and which recovery services and/or compensatory education [Student] needs."

out of 4 trials), and written language (planning/pre-writing tool improve from 3 to 9 out of 10 trials, on-topic writing improve from 5 to 9 out of 10 opportunities, and editing improve from editing 5 to 9 out of 10 mistakes)¹², with progress reporting at the trimester. The IEP continued to provide the Student with the following specially designed instruction, related services, and supplementary aids and services:

- Speech language pathology: 120 minutes per month (provided by an SLP in the general education setting)
- Occupational therapy: 300 minutes per year (provided by an OT in the general education setting)
- Social/behavior: 30 minutes per week (provided by special education staff in the general education setting)
- Written language: 20 minutes, twice per week (provided by special education staff in the special education setting)
- Study/organization: 10 minutes, twice per week (provided by special education staff in the special education setting)

The IEP noted the Student would spend 96.6% of his time in the general education setting. The IEP included 60 minutes per year of audiology support as a support for school personnel to support accommodations related to the Student's auditory processing disorder and IA support for 30 minutes, four times per week in the general education setting.

95. Also, on January 21, 2022, the principal emailed the Parents and other IEP team members a weekly update email. The email contained updates from the Student's teacher and case manager, noting the Student had a good week, worked on written work for a book project, asked for clarification and help, verbally and in writing explained frustrations during group work, had productive resource writing groups, did a timed writing exercise with the iPad, and worked on poetry. The case manager noted the Student's IEP goal baselines had been updated.¹³ The principal attached a transcript of the IEP meeting chat and sent a poll to schedule the next meeting, "specifically with OT to brainstorm ideas to bring to the larger group."

96. On January 28, 2022, the principal emailed the Parent the speech and occupational therapy logs. The email also included updates from the general education teacher, case manager, and SLP. Regarding communication, the principal noted they would continue with "weekly updates

¹² OSPI notes that the January 2022 amended IEP included in the District's response included the updated baselines that appear to have been amended in October 2021. However, in the emails included with the District's response, on January 30, 2022, following the January 21, 2022 IEP meeting, the case manager emailed the Parents a copy of the October 2021 amended IEP: the IEP attached was dated October 20, 2021, but included the unamended baselines of zero. It is unclear why the case manager sent the October 2021 amended IEP instead of the January 2022 amended IEP, or why the IEP sent did not include the amended baselines. However, on March 17, 2022, the case manager emailed the Parents a copy of the "current version" of the IEP, which did include the updated baselines.

¹³ The Parents noted in their reply that while the baselines may have been updated, the level of progress has not been updated and thus the progress reports are inaccurate.

from [general education teacher] that are class specific, weekly updates from me that are [Student] specific, and any other typical communication from [case manager].”

97. On January 29, 2022, the Parent emailed the case manager Parent concerns to be added to the IEP.
98. On January 30, 2022, the case manager emailed the Parents the final amended IEP from the January 21, 2022 IEP meeting, which incorporated the Parent’s concerns.
99. On January 31, 2022—as agreed to at the January 21 meeting—a smaller group convened to discuss occupational therapy, including service location and duration. The team agreed to continue providing occupational therapy in the general education classroom but did not agree to the Parent’s request that increased minutes of therapy were warranted.

According to the District’s response, the OT “indicated that Parents’ concerns would better be addressed through counseling, if deemed appropriate by the IEP team.”

The Parents noted in their reply that the majority of the meeting “was gather information about what services are being delivered to [Student] and how is goals are supported.” The Parents stated that, “During this conversation [the OT] mentioned, again, that [Student] does not qualify for direct services, despite her apologizing for her confusion about this already through the Principal’s January 7th email, acknowledging that [Student’s] IEP states he receives direct services.”

100. On February 8, 2022, the Parent emailed the case manager and OT, and in part asked for an updated copy of the Student’s visual schedule. Subsequent emails on February 15 and 18, 2022 indicated the schedule sent to the Parents was “not a visual or accessible schedule and it is a class schedule dated 10-14-21” and that the Parents continued to request this accommodation be implemented.
101. On February 9, 2022, the Parents filed this complaint.
102. Based on emails provided the Parent, the IEP team was scheduled to meet on March 8, 2022 and the agenda included, in part:
 - Review of agreements made from previous IEP meeting and clarification of in-person instruction accommodation.
 - Review of children’s hospital report.
 - Counseling services (pending the IEE).
 - Behavioral goals created by District and private BCBA.
 - OT services – IEP mandated/provided; frequency and minutes.
 - Assistive Technology – AT specialist was not present in the 1/21/22 meeting.
 - Recovery services.
 - Accommodations for testing and other accommodations.
 - Current ESY data.

Subsequent emails indicated the Parent provided input on the agenda items and the case manager continued to craft the agenda. Emails indicated the Parents had the following feedback or specific concerns, in part:

- Wording of the in-person learning accommodation did not reflect the team agreement or meet the Student's needs.
- Parents feel the Student's need for counseling has already been established.
- Behavior goals were designed by the private BCBA to be implemented in the general education setting and thus the District's offer of a pull-out social group to implement the behavior goals and skillstreaming curriculum is not appropriate for the Student.
- Occupational therapy concerns related to the amount of time spent on consulting with staff and that the Student needs more support in the areas of sensory, handwriting. The Parents noted that what the OT "addressed so far are important skills [Student] needs to learn" but that 30 minutes a month is not sufficient, and that the Student's private providers are working with the Student for an hour a week on occupational therapy and speech therapy. The Parents also disagreed with the occupational therapy minutes being listed yearly, and stated this should be listed as weekly minutes.¹⁴
- AT: The Parents stated the IEP team needed to discuss AT and that they had been requesting a meeting about AT or a meeting with the AT specialist since fall 2021.
- That the team schedule the next IEP meeting at the end of each current IEP meeting to avoid delays.

103. On March 8, 2022, the Student's IEP team—including the Parents and their advocate, the case manager, general education teacher, OT, SLP, AT specialist, principal, program specialist, and director 2—met. The team agreed, "that it was appropriate if the Student utilized his iPad for some assignments and writing for others. It was agreed that an AT Specialist would meet with the Student to access his current AT needs." A follow-up IEP meeting was scheduled.

Emails provided by the Parent indicated the Parents found the prior written notice documenting the meeting unclear and provided their own updated language. Based on this, it appears the team discussed:

- Holding an IEP meeting on March 22 and a separate meeting for AT.
- Disagreement over amending the IEP now versus developing a draft annual IEP.
- No further follow up occurred related to the in-person learning accommodation.

The District updated the prior written notice based on the Parent's notes.

104. On March 16, 2022, the Parents stated they "just received a backdated Meeting Notice, dated 3/16 for the 1/21/22 IEP meeting" and stated that this was "the first Meeting Notice we received in [Student's] case since our March 2020 meeting, where the invitees and their roles are actually listed."

¹⁴ The Parents noted in additional emails they had the same concern regarding speech minutes—specifically that the team agreed to 30 minutes per week of speech services but wanted to record the minutes as 90 minutes per month. The Parent noted, "We keep hearing that it offers flexibility to the staff. I do not see how that is considering individual needs of students," further clarifying that for the Student, he needed consistently scheduled services.

According to the Parent’s complaint, the District failed to send meeting invitations that “included who will be attending the meeting and their role.” Further, regarding meeting notices and meeting attendees, the Parents noted in their reply that they often have to guess who is attending the IEP meeting as they do not receive meeting notices. And the Parents stated that the AT specialist and District BCBA (or a psychologist or someone with a mental health background) do not regularly attend IEP meetings, even when those topics are on the meeting agenda.

IEP Implementation during the 2021–2022 school year

105. During the 2021–2022 school year, the District stated the Student was primarily provided IA support from two IAs in the general education classroom supporting during unstructured time. The District provided the Student’s general education classroom schedule, with specially designed instruction indicated as follows:

- Occupational therapy: 30 minutes per month on Tuesdays at 9:35.
- Writing and Study/Organization: 30 minutes every Thursday at 10:30–11 (20 minutes writing and 10 minutes study/organization) and Friday at 9:30–10 (20 minutes writing and 10 minutes study/organization).
- Monday: Resource room time scheduled, if needed at 10:05.
- Speech: 30 minutes on Wednesdays at 1:25.

The District provided statements, services logs, work samples, and other documentation from the Student’s teachers and providers, which included the following:

Specially Designed Instruction:

- Case Manager: “His study organization goal is also focused on writing, and during this time, [Student] works on initiating writing and using a pre-writing tool to complete writing assignments. He receives social/emotional [specially designed instruction] in the general education classroom, including working on goals regarding active listening and perspective taking with the SLP. He receives additional support from IAs.”
- The District noted the IAs “push-in to [general education teacher’s] class throughout the day and are not rigid when they serve the Student” because they base their support on the Student’s daily needs. The IAs are in the classroom to support during morning writing time.

The District additionally provided examples related to the Student’s goals and instruction, summarized:

IEP Goal	Notes
With peers identify and label unexpected behaviors to an adult partner	Resource room writing group: 11/19/21 Another student exhibiting inappropriate behavior, Student labeled behavior unexpected. Able to list several unexpected behaviors.
With peers, use visual supports to generate questions and comments related to a non-preferred or unfamiliar topic	SLP: 9/22/21 used visual cues to generate possible questions. 12/8 asked follow-up questions. 1/19/22 generated follow-up questions on non-preferred topic.
With peers, generate 3+ possible solutions to a given problem	SLP: 9/22/21 Brainstormed ideas (How to know someone is listening)

	Resource room writing group: Student participated in conversations about problems in own or peers writing. Student has generated solutions. E.g., 10/6/21 teacher request to add dialogue to story - Student's characters are not human and can't talk. Discussed possible ideas and then pick one. 2/10/22 discuss solution to story problem how to show reader a character's thoughts.
Writing assignment: Initiate task within 2 minutes or ask for help using effective voice tone, volume, and timing	Student often will take a long time to think about writing. After "think time" a large volume of writing is produced. Writing produced in his gen ed class meets teacher expectations. Once Student has decided what to write, it is initiated within 2 minutes.
Writing tool (e.g., outline, graphic organizer): Record thoughts on the pre-writing tool in a way that will facilitate paragraph writing	Examples using "story mountain" and a 6-panel flow map for historical fiction piece.
Find and correct mistakes in writing conventions	Student has not needed assistance finding and correcting mistakes.
Complete writing assignment using idea from a pre-writing tool	Using writing tools to complete writing. Writing produced in his gen ed class meets teacher expectations.

Speech:

- SLP: Student "has been working on the underlying skills needed to achieve his IEP goals...to help support his listening skills and participating in conversation about non-preferred topics, we choose a topic together (or I provide one...to test his generalization skills) and I help to support him in asking questions even when he is uninterested in the topic. Sometimes I provide visual prompts, which I have sent to the family, or written down on a piece of paper, or use verbal prompts. First determining question words (e.g., who, what, where, when, why, do/did, have, etc.) has been beneficial in generating questions to non-preferred topics. [Student] and I make a plan for him to ask peers questions throughout the week. We discuss real-life or hypothetical scenarios to help support his flexible thinking goal. To help support perspective taking, we review how we know whether someone is listening, metacognitive skills such as what someone might be thinking using verbal scenarios, nonverbal communication, and role-playing strategies."
- The District's response included SLP notes, documenting sessions on September 15 (baseline class observations), 22, and 29, October 6, 13, and 20, November 3 and 17, and December 8, 2021, and January 12 and 19, 2022.¹⁵ The SLP notes indicated the Student worked on social skills, listening skills, conversation activities, learning about friends and people who are different, asking questions and follow-up questions (preferred and non-preferred topics), approaching friends, discussing similarities, perspective taking, practicing discuss how we feel in easy and hard situations, and identifying people you can trust.

Occupational Therapy:

- The documentation indicated the Student has been provided 180 minutes, so far, of observation and direct therapy on September 13, (observation), October 4, November 2,

¹⁵ The SLP's notes indicated the Student was absent on December 1 and 15, 2021.

December 6, 2021, January 24, and February 15, 2022 (all direct therapy). The OT worked with the Student monthly, and the District stated the distribution of minutes is on track. The OT logs also indicated the OT regularly consulted with the case manager, teacher, and IEP team.

- The District's response also included OT logs¹⁶, documenting the following, summarized:
 - September 2 and 13, 2021: OT communicated and consult with special education teacher regarding Student's needs, goals, scheduling, and collaboration. Conducted classroom observation of Student and consulted with general education teacher. The OT indicated she would like to schedule sessions with the Student monthly for 30 minutes to work on sensory supports, writing, and possibly AT.
 - October 4, 2021: Session with the Student – worked on "story mountain" prewrite, diagramming ideas, writing sentences. Student "wrote 8 sentences with great detail...8/8 punctuation and 7/8 correct beginning caps., with functionally legible fair handwriting." Noted that next time, they would try word prediction using Microsoft Word.
 - October 4, 2021: Also responded to IEP team email with an update about the Student's handwriting, what they worked on that day, and that she could support with AT. The OT noted the Student was doing a good job with handwriting, legibility, and writing production. The OT noted the Student did struggle getting ideas down. Additional emails between the Parent, OT, teachers, and private OT included that the Student was working in the classroom, needed little to no prompting. The Parent shared information and concerns about the Student's refusal to use the iPad.
 - October 19, 2021: Consultation with special education teacher, special education teacher working on handwriting with Student as well, in occupational therapy "[Student] increased writing after a 'Story Mountain' prewrite; he is progressing well;" Reviewed outside OT evaluation; Responded to and reviewed emails with Parent.
 - October 19, 2021: Additional consultation (via email) and teacher contact regarding AT with AT specialist and general education teacher. The OT emailed the AT specialist regarding her suggestions on the Student's AT report as the Student did not want to use his iPad. General education teacher emailed that the Student's handwriting was at grade level, attached samples (pre-writing, character description, and math assessment), and noted the Student was not using AT and consistently communicating that he did not want to use an iPad or laptop. The general education teacher noted, he was happy to work with the Student on AT but was "nervous about creating a source of tension. [Student] is working hard in class and participating regularly...He is writing. His work right now is very much consistent with the rest of the class – and better in many areas, which I know is not surprising." The AT specialist responded that all recommended apps from the AT evaluation were included in the Student's iPad and noted she was "inclined to encourage that the IEP team continue to building on the success he's having, and maintaining the iPad as a backup method in the event that [Student] buys-in and is motivated to use it."
 - October 25, 2021: Student absent. Consulted via email with the Student's team and private OT. The emails indicated the OT was using Microsoft Word with word prediction and speech to text, and noted the Student's handwriting was "excellent regarding

¹⁶ The Parent alleged the OT log was created after the fact—i.e., not contemporaneously with services—because the log is dated February 2022. It is not clear if the log was created in February or whether this date indicates when the log was downloaded/printed for a record production. Regardless, many of the email updates included in the log were written contemporaneous with when services occurred.

legibility and functional grade level access; he is creating imaginative detailed stories.” The OT stated she would follow the Student’s lead with respect to using AT or handwriting. The private OT noted, with respect to AT, that “if [Student] is preferring the laptop that his peers are using then we need to follow his lead.” The private OT also stated, “Seeing as [Student] is currently performing as his peers with planned handwritten samples but will be moving to middle school soon where the writing demand increases, I would suggest/concur with ensuring he is instructed in and practices typed writings using his available AT supports...He will initially be resistant to something new but will need the repeated exposure given further grade levels up to college often require typed writing samples done outside of the classroom in addition to timed handwritten samples within the classroom; he will benefit from AT supports for both to ensure adequate demonstration of his understanding of the content.”

- November 2, 2021: Session with the Student. The Student completed 20 minutes of writing, including typing the previously handwritten story and then adding a second paragraph. The Student typed 143 words in 20 minutes, using word predication for the first paragraph “for about 10% of the words, but said he did not need it, because it slowed him down.” Reviewed how to spell-check.
- December 6, 2021: Session with the Student. The Student completed timed tasks: typing from a book using word prediction (“8 words/minute (wpm) and 4 sentences with 100% conventions”), typing without assistive technology (“70 wpm and 7 sentences with 100% conventions); writing a story of his own (“6 wpm, given needing to pause to think of content.”)
- December 14, 2021: Consultation via email, provided updates for weekly family update.
- January 24, 2022: Teacher contacts via email, including the Parent’s record request and an email to the Student’s teacher regarding what writing assignment and what “writing, organization, study skills, or social skills related to academics I can help with.” The OT also asked if occupational therapy could be helpful at recess.
- January 24, 2022: Session with the Student. Discussed that that Student thought school was boring, but stated “I still want to come to school,” discussed recess and friends and whether the Student needed/wanted assistance at recess. Worked on a classroom writing assignment (poem) and Student “handwrote 8 phrases with 100% legibility and spacing.” OT emailed teacher the plan for occupational therapy sessions.
- February 11, 2022: Consultation with general education teacher and provided information for the “Friday Family Update.”

Assistive technology:

- AT specialist: “I meet with team, help the team engage in problem-solving and initial decision making based on outside/private provider reports, provided the technology the team decided upon, and trained the student, parents, and school-based team. Furthermore, I’ve offered follow up training, meetings, and problem-solving this year in addition to what was provided last year. The school team provides the day-to-day support of assistive technology devices.”
- Regarding assistive technology:
 - The AT specialist checked in with the team on September 14 and 20, 2021, to see how the Student was doing and whether any follow up training was needed.
 - Email discussions in September and October 2021, between the AT specialist, the Student’s teachers, and the Parent indicated the Student was refusing to use the iPad and that concerns remained about the Student’s ability to generate ideas.

- Staff discussed—via email—about Student buy-in to using the iPad and the OT suggesting the Student might be more receptive to using a laptop. The Student’s general education teacher indicated the Student was not interested in using a laptop either. The AT specialist encouraged the team “to continue to build on success and maintain iPad in case [Student] buys-in” and the Student’s private OT echoed this “advocating for [Student] to use laptop if he will buy in.” The District noted that, “Because his handwriting is functional and he has indicated preference for a laptop, the school team has been working to follow his lead and not create tension by forcing him to use a specific device.”
- In November 2021, the AT specialist’s notes indicated the Parent was interested in an “AT reconsiderations process.”
- The AT specialist noted that as of January 11, 2022, per discussions with the Student’s special education teacher, the Student was now using the iPad and the AT specialist stated she was available to support.

Regarding accommodations, the District’s response included notes and OSPI sent questions to the Parent for the Student to respond to, which provided information about the accommodations. (See Exhibit A).

Overall, the District noted in its response that “From the school team’s perspective, the Student’s transition back to school has been positive. In various communications, the team reported that the Student was building rapport with staff, engaged, socializing with peers, and doing well academically.” The District acknowledged that the Parent reported the Student was struggling socially, bored by school, and unable to get to school on time due to resistance and anxiety. The District stated that while the Parent may disagree with the IEP, particularly the occupational therapy and assistive technology portions, “the District is implementing the IEP as written and has consistently been responsive to the Parents’ ongoing concerns. Moreover, the Student has made progress and the team has appropriately adjusted services as needed through the IEP team process.”

106. Regarding the implementation of special education services, in their complaint and reply, the Parents brought up the following concerns:

- The team agreed an IA would provide the Student support for writing and this has not occurred as the IEP stated “Additional Classroom IA Support” without specifying what services the IA will provide. The Student stated he has received minimal help from the IAs and the Parent noted the Student needs to build rapport and trust with people, which he cannot do with the IAs as the support is inconsistent.
- Occupational therapy services are not being provided as agreed upon by the team, which included occupational therapy for sensory needs and to support the Student’s social behavior goals. The Parent also stated that emails (indicating the OT is supporting AT) from the OT did not align with her service/therapy log in terms of what services were provided. The Parents noted the OT has observed the Student, which is not a direct service. The Parents also acknowledged the OT’s work with the Student on typing is a needed service, but not one that is currently on the Student’s IEP.
- AT supports have not been provided as “staff [have] allowed [the Student] to ‘opt out’...instead of understanding the refusals.” The Parent stated they believed the “refusals are related to the implementation of his support and my child being able to independently access. There has

been no training provided to my child during the 2021–2022 school year related to his [AT] supports.” The Parents also noted that the Student’s needs have changed since AT was last evaluated and that the AT specialist has talked about “conducting task-tool analysis” to assess current needs but that has not yet been done.

- The Student’s refusal behaviors are related to his disability and the District needs to designed instruction to teach the Student skills instead of allowing him to “opt out.”
- The District has failed to provide specially designed instruction in social/emotional behavior, written language, and study skills because it is “unclear how our child’s IEP goals are being implemented” and it is unclear “if the research-based curriculum is being used.”

107. Regarding implementation of special education services, OSPI sent a questionnaire to the Student and Parent. The Parent discussed with the Student over several days and conversations and provided the following information:

- The general education teacher provides the Student help with writing. Sometimes a student teacher helps.
- The Student shared that he does not like working with the case manager and that she makes his writing worse. The Student shared the case manager only tries to help him with writing (not organizational things—“no one is teaching me that”, or to use the iPad, practicing things learned with SLP). The Student shared that he does not like being pulled out into the resource room, it is not helpful, and it is too loud.¹⁷
- The Student shared that he would like to learn to type faster.
- With the SLP, the Student shared he learns about “Asking right questions and with the right timing. Knowing what to ask. and conversation starters. Changing topics, just trying to improve conversation skills. I work with her in the classroom library.” The Student stated they work one-on-one.
- With the OT, the Student stated she tries to make him go to the resource room and that she does not teach him anything. The Student stated: “She sits there next to me and she says nothing... She says she is here now and then she doesn’t talk except talking to my classmates and helping them with writing. She watches me write. She doesn’t talk to me. She watches me try to write. She doesn’t help.”
- Regarding the IAs, the Student stated he saw one of the IAs last school year and that another IA works with a different student.
- Based on what the Student shared with the Parent, the Parent stated the following goals had not been implemented as the Student “refuses to use pre-writing tools, graphic organizer etc. to plan out his story”:
 - “...when given a 4th grade level non-fiction writing assignment...and a pre-writing tool such as an outline, writing frame, or other graphic organizer, [Student] will record his thoughts on the pre-writing tool in a way that will facilitate his writing of a paragraph improving writing planning skills from 3 of 10 trials to 9 of 10 trials as measured by observation and work samples.”

¹⁷ The Parent stated, “[The Student] no longer goes to resource room, he says. He opts to stay in his class and get help from his teacher. This has alleviated some of his anxiety from being pulled out and having to deal with transition from general education class into resource room right before having to do such a difficult task such as writing. It is too difficult for [Student] to focus when he is anxious. He does not feel resource room is helpful. Writing seems to be the only area addressed in resource room. This is reported by [Student] at least.”

- The Parent noted, this goal leads into the second writing goal: "...[Student] will complete the writing assignment using the ideas from the pre-writing tool improving writing skills from 5 of 10 opportunities to 9 of 10 opportunities as measured by work samples."

CONCLUSIONS

Issue One: Individualized Education Program (IEP) Implementation – The Parents alleged the Student's IEP is not being implemented with respect to IA support, occupational therapy, assistive technology and other accommodations, and specially designed instruction.

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 disabled child and those required by the IEP.

Here, the Parents signed consent for the provision of special education services on June 11, 2021. The District's last school day was June 18, 2021, meaning the 2021–2022 school year will primarily be reviewed with respect to whether the IEP was implemented.

Assistive Technology: Regarding assistive technology, the Parents stated that the school staff have allowed the Student to "opt out" of using assistive technology, instead of understanding his refusal behavior as connected to his disability and providing the Student instruction to overcome this barrier.

The Student's IEP includes AT, primarily accessed through an iPad, but including "word processing, including word prediction, visual organization tools, text to speech (so he can hear his own writing), speech to text, training to use AT supports. He also needs Timer for breaks and reminders from AT device to take breaks."

The documentation in the complaint indicates that the Student had access to the iPad and that the Parents, teachers, and Student received training and orientation to the iPad in May and June 2021. Documentation, primarily email discussions, indicated the Student was generally resistant to using the iPad and preferred using a laptop (so as to not stand out from other students). The OT indicated she could support the use of AT during her sessions, and mentioned in October 2021 that they would need a "team approach/coordination" to work on AT with the Student. However, despite the AT specialist's offers in the fall of 2021 to provide follow up training and problem-solving related to AT, it does not seem like any of the Student's teachers or other providers accessed further training. In general, it does appear that the staff followed the Student's lead—in part in order to not create tension and stress for the Student—and allowed the Student to choose when to use AT for writing or to handwrite.

By January 2022, documentation indicated the Student had used the iPad for assignments more and that at a March 2022 IEP meeting, the team discussed and agreed that it was "appropriate if

the Student utilized his iPad for some assignments and writing for others. It was agreed that an AT Specialist would meet with the Student to access his current AT needs.”

Overall, OSPI notes that while it may be valid to allow the Student to choose in some situations, if the IEP team agreed the Student needs and will benefit from AT, the Student also needs instruction in how to use those services and devices. Relying on the Student to “opt in” to his special education services is not appropriate. While the Student was provided access to his AT, OSPI finds this portion of the IEP was not materially implemented as the Student was allowed to opt out and was not provided instruction or the appropriate support to use his AT. As the IEP team has already discussed an AT reconsideration/“task-tool analysis,” the District will complete this reconsideration/analysis to determine the Student’s current needs and then the IEP team will discuss a plan for how AT will be provided.

Accommodations: The Parents raised concerns about several other accommodations that they felt the District was not providing. The District provided notes on the Student’s accommodations, with the position that the accommodations were implemented. However, other documentation in the complaint points to several accommodations that were not implemented:

- Visual Schedule: The Parent repeatedly requested a copy of the Student’s visual schedule during the 2021–2022 school year. The school staff did, at points, provide the Parent with a copy of the Student’s classroom schedule, which the Parent noted was not accessible for the Student. OSPI agrees, the copy of the Student’s schedule was challenging to read, and it is hard to see how it would support the Student with transitions and address the Student’s anxiety.
- Weekly school-home communication log: This accommodation was not provided until sometime in December 2021 with the principal’s first weekly update email.¹⁸
- The Student’s and Parent’s feedback indicated other accommodations were not regularly provided—or were perhaps available to the Student—but the Student did not have the awareness to ask for the accommodation, nor was the Student prompted to use accommodations, such as: sensory breaks, sensory tools, writing devices (pencil grip, etc.), quiet area for sensory breaks, shortened assignments, visual timer, word banks and sentence starters.

The Student and Parent indicated other accommodations were provided, such as access to regularly scheduled lunch and recess, oral reports, use of a sound system, preferential seating, and prompts to help transitions. Some accommodations are regularly provided in the general education classroom, although it is unclear if they are provided in other classes, such as calling on the Student only when his hand is raised, extra time to build rapport, and extra time to complete assignments. The Student did state the OT had him use the word predication accommodation, but that he did not like it as it made him type slower.

Overall, OSPI finds that the implementation of accommodations was mixed. Some accommodations were not provided; others were provided; and still others were likely available, but the Student was not prompted to use them or provided instruction on how to access his accommodations—meaning the accommodations were not really accessible to the Student. Thus,

¹⁸ OSPI notes the Parent disagrees with the format of this accommodation being a weekly update from the principal. OSPI recommends the IEP team discuss this accommodation and whether a different format would be more appropriate.

taken as a whole, OSPI finds the accommodations were not materially provided and finds a violation. As a corrective action, the Student's IEP team and teachers will receive training from a BCBA on providing accommodations for students with autism and students with refusal behaviors.

Instructional Assistant Support: The Parents stated the IA would provide the Student support for writing and that this has not occurred. The Student's IEP included IA support for 30 minutes, four times per week in the general education setting.

The District's information indicated that the Student's general education class did not have a specifically assigned IA, but instead that IAs rotate through the class, depending on the schedule, and stated that there were IAs in the Student's classroom during writing time for more than 120 minutes per week. The Student consistently—as recorded in emails from the Parent throughout the school year and as stated by the Student in response to this complaint—reported that no IAs were working with him on writing. The Parent asked several times throughout the year for information of the specially designed instruction that the IAs were delivering or supporting the Student with. The school did not seem to provide a response to the Parent's question about the specific instruction provided by the IA, but instead provided general information about what an IA might do:

...IAs are trained to layer the in the [specially designed instruction] that students need. For example, the classroom teacher may teach a lesson about what makes a good story, then an IA may help the student use of create an organizational tool (one of the [S]tudent's IEP goals) that will reinforce the lesson the teacher just teach and help the student initiate and complete a writing assignment (another of the [S]tudent's IEP goals)...

The Student also consistently stated that his general education teacher, and sometimes student teacher, provided him instruction in writing.

The first documentation of explicit directions to the IAs came around October 27, 2021, in an email from the case manager to the general education teacher and IA, wherein the case manager noted the Student had IA support in his IEP and that "be either in writing, study or social skills" and "in class I think it would be great if someone could notice if [Student] is getting started with writing and check in with him if he struggles." The case manager also suggested the IAs check in and provide support at lunch or recess as well.

OSPI finds that the Student was likely provided some IA support, although given the instructions provided by the case manager at the end of the October 2021, it is not clear how consistent this support was prior to that. Further, given the Student's consistent statements that he does not get assistance from IAs—which, based on documentation of the Student's need to build rapport and his lack of self-awareness around his own needs at times, it is possible the Student is receiving more support than he realizes—however, the overall documentation does not support that the Student was consistently receiving 30 minutes, four times a week of IA support. OSPI finds this to be a violation. As the IA was primarily to support the Student's access to writing instruction, the District will be required to provide compensatory education in writing. The time period between the start of the school year and filing of the complaint was approximately 20 weeks, excluding breaks, meaning the Student was entitled to 2,400 minutes or 40 hours of IA support. Given that

the IEP did not include the IAs as the staff delivering specially designed instruction, but rather a support, and that the Student likely had access to some support, the compensatory education will be awarded at the rate of 25% of the total time—or 10 hours.

Occupational Therapy: The Parents alleged the occupational therapy services are not being provided as agreed to by the team, which included addressing sensory needs and to support the Student's social behavior goals. The Parents also stated the OT failed to provide direct services. The Student's IEP included 300 minutes per year of occupational therapy, provided by the OT in the general education setting as a related service.

In general, the documentation shows the OT has provided 30 minutes of occupational therapy per month, approximately 180 minutes through February 2022 of observation and direct therapy. The District's documentation included observations or sessions on September 13, (observation), October 4, November 2, December 6, 2021, January 24, and February 15, 2022 (all direct therapy). The District stated the distribution of minutes is on track. The OT's logs also indicated the OT regularly consulted with the case manager, teacher, and IEP team. The OT's logs also indicated the OT planned to work with the Student on sensory supports, writing, and AT, and included documentation (often based on email updates provided) that during direct sessions, the OT worked with the Student on: writing, using a prewrite and diagraming sentences, handwriting, typing, word prediction, and spell check.

Generally, the OT found that the Student was doing a good job with handwriting, legibility, and writing production. The OT noted the Student did struggle getting ideas down. There is no indication however that the OT worked with the Student on sensory needs or social behavior; however, as noted in the IEP—"OT will support goals related to social behavior."

On the other hand, the Student provided feedback that the OT just sits with him and watches him write, and that she does not help him with writing. Here, the Student's perception is valid and speaks to a need for the OT to further build rapport with the Student and more explicitly explain the instruction she is providing. At the same time, the Student's reflections do not mean the OT was definitely not providing services either, even if his experience was that the OT was just sitting there.

However, of concern is how the OT has characterized her services. The OT incorrectly stated that the Student has "Support to Personnel or consultation to staff, not direct services on the Service Matrix. Consult services are listed under Modifications/Accommodations page." The OT later apologized for the miscommunication and clarified that occupational therapy was a related services for the Student, although noted a related service could include direct and indirect services. OSPI notes a related service model could include some indirect services, such as observation and consultation. Further, the IEP specifically notes in the occupational therapy present levels that the services may include indirect services. Thus, the fact that the OT has observed the Student is not alone a violation.

Overall, there is continued disagreement about what the OT's services should look like and consist of and indications that the OT is seeing different needs at school than the Parents and their private

providers. OSPI notes that the IEP team should continue discussion of OT services after the IEE has been completed. However, with regard to implementation, after reviewing everything, the occupational therapy services—while perhaps not exactly what the Parent wants them to look like—have been materially provided. OSPI notes, additionally, that there is still time in the school year to provide the remaining required minutes and OSPI strongly recommends the OT review the IEP and see what additional services can be provided in the area of sensory needs and social behavior.¹⁹

Specially Designed Instruction: The Parents stated the District failed to provide specially designed instruction in social/emotional behavior, written language, and study skills because it is “unclear how our child's IEP goals are being implemented” and it is unclear “if the research-based curriculum is being used.”

The IEP included goals and specially designed instruction in social/behavior (perspective taking, listening skills, and flexible thinking improvement), study/organizational skills (task initiation/self advocacy), and written language (planning/pre-writing tool, on-topic writing, and editing). The Student’s schedule reflects that the Student has time in his schedule that allows him to receive the full minutes in his IEP.

Documentation in the complaint indicates that the Student receives services from the SLP that address the social/behavior goals. While the Parent did raise questions about whether the “SkillStreaming” lessons were being used as discussed by the IEP team in spring 2021, and it appears the case manager did not provide information about the “SkillStreaming” lessons to the general education teacher and SLP (to which the SLP responded that the lessons would be great resources) until several months into the school year, this does not mean the social/behavior specially designed instruction was not provided. The IEP does not specify that the social/behavior instruction will consist only of this particular curriculum, and the overall documentation in the complaint, including progress reporting noting the Student was making progress²⁰, indicate this instruction was being provided.

Regarding study/organization instruction on task initiation, the Student reported no one was providing him instruction on this. However, the case managers statements, documentation, and progress reporting indicate the Student is being provided this instruction as part of his writing instruction and that he is making progress in this area. OSPI thinks that it is very possible the Student is getting this instruction without realizing it. To that end, OSPI finds that it may be helpful

¹⁹ OSPI also notes that there are communications from the OT and there have been discussions at recent meetings that the OT sees this need as more of a mental health need to be addressed by a counselor. OSPI acknowledges that there is a continuing disagreement regarding what the occupational therapy services should entail and again encourages the IEP team to revisit this to attempt to reach consensus.

²⁰ OSPI notes the Parent disagrees with the amount of progress recorded on the progress reports, which is addressed below related to IEP present level/baseline development. However, even if the progress the Student has made is not as much as shown on the current progress reports, the progress reporting still shows that in general, the Student is making at least some progress in all goal areas.

to be more explicit with the Student, but that generally specially designed instruction in study/organization is being provided.

Finally, the Student receives writing instruction from the special education teacher/case manager in a pull-out writing group and additional instruction and support from the general education teacher, and some support in this area from the OT as well. Overall, the documentation—including email updates, discussions of writing assignments, and some work samples—indicates the Student has received his specially designed instruction in writing and has made at least some progress on his writing goals.

OSPI does note a few things, one the Student has clearly communicated he dislikes being pulled out of class for a writing group and that he does not feel like the instruction from the case manager is helpful. Again, while this does not mean the IEP is not being implemented; OSPI thinks it is important to listen to the Student's feedback. He is currently refusing to attend the writing group and seems to be successfully receiving writing instruction from the general education teacher in the general education setting. OSPI recommends the Student's IEP team consider whether he could be provided and benefit from writing instruction in a push-in model.

The other important area to note is around the goals that include use of a graphic organizer (a graphic organizer is also an accommodation for the Student). The progress reporting indicates that between the November 2021 and December 2021 progress report, the class had not used a graphic organizer. Specially designed instruction in a goal area, if it includes something like a graphic organizer, should not be contingent on whether the class as a whole is using the particular tool. However, documentation from the OT and case manager indicate that the Student has used pre-write tools and graphic organizers to complete writing assignments. Also, important to note is the Student's feedback related to graphic organizers, which indicates he is generally resistant to using this tool and that he thinks it makes it harder to write. The Parent stated that this means the District was not providing the graphic organizer or instruction in this area. However, OSPI finds the Student's statements to be mixed—both that he has used but does not like using a graphic organizer, that he is aware of this tool and resists using it, and that at times he was not using or aware of graphic organizers he could use. Like AT, OSPI believes this is an area where special attention may need to be paid during instruction to teach the Student the skills to use such writing tools and not just allow the Student to refuse.

Overall, OSPI finds that the documentation indicates the writing specially designed instruction has been provided, and in summary, that specially designed instruction in all areas has been materially implemented.

Issue Two: IEP Development – The Parents alleged the District failed to properly develop the Student's IEP in a variety of ways as discussed below.

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. The team must also consider the use of positive behavioral interventions and supports and other

strategies to address the student's behavior if the behavior impedes his learning or the learning of others.

Present Levels: The Students June 2021 IEP included present levels and goals with a baseline of "zero" for each goal. The prior written notice from the February 10, 2021 IEP meeting indicated that the team agreed "to report progress on IEP goals a few weeks after initiating the IEP, in addition to the regularly scheduled progress monitoring." Email documentation makes clear that the Parents did not believe the Student was at a "zero" baselines in each goal area and that their understanding was that once the IEP had been implemented, the baselines would be updated in the fall of 2021.

IEPs must include a statement of the student's present levels of academic achievement and functional performance, and include measurable annual goals. It is important to have accurate present levels and measurable annual goals as this directly connects to the specially designed instruction that is implemented, and the District's ability to monitor and accurately report progress.

Here, it is confusing what occurred with the IEP goal baselines. The District stated that the team collected significant data and updated the Student's baselines after the Student returned to school in the fall. In the documentation provided by the District, the goal baselines appear to have been updated in an October 20, 2021 amended IEP (baselines updated from 0 to between 2 or 5 depending on the goal). However, this presents concerns: First, the Parents agreed to amend the IEP *without* a meeting to add testing accommodations but did not agree to update baselines without a meeting; and second, it is not clear this amendment with the updated baselines was provided to the Parents. Subsequently, the November 2021 progress reporting appeared to use the original baselines of zero and then prior to the January 2022 IEP meeting, the District stated the IEP baselines would be updated—indicating they had not already been updated in the fall. The baselines were updated in the January 2022 IEP, but after the meeting, the District still sent the Parents a copy of an October 2021 amended IEP with the original baselines of zero and then, finally on March 17, 2022, emailed the Parents a copy of the "current version" of the IEP (January 2022 amendment), which did include the updated baselines.

If the baselines had been updated earlier in the fall, it is unclear why the District did not clarify this with the Parents or send them a copy of the IEP amendment, highlighting the updated baselines. Instead, the District appeared to ignore the Parents repeated requests related to this topic. OSPI agrees with the Parent that without accurate baselines, the Student's progress reporting will be inaccurate, which could impact future goal development and assessment of needs. OSPI finds that the District could have and should have updated the goal baselines earlier in the fall *and* should have clearly communicated this to the Parents. OSPI finds a violation with respect to the development of the baselines in the IEP. As a corrective action, the District will be required to update the Student's existing 2021–2022 progress reporting so that the goals with the accurate baselines are used and the comments about progress are updated to reflect progress based on those updated baselines.

Occupational Therapy Needs: The Parent's concerns about occupational therapy included elements that are outside the scope of this complaint investigation—e.g., their disagreement with the original evaluation completed in December 2020, to which they provided their dissenting opinion. The District has subsequently agreed to the Parent's request for an independent educational evaluation (IEE) that will also cover occupational therapy.

Regardless, there are a few things to discuss regarding occupational therapy. In March and May 2021, while developing the initial IEP, the Parents requested that information from their private OT's report be added to the IEP. Although the Parent's disagree with how this was recorded, the May 2021 IEP draft discussed occupational therapy, and noted there was a private report and included information about the Student's handwriting needs. The District stated it had "been over the OT portions in past prior written notices and the team has considered and is addressing some of the pieces within the writing portion of the IEP."

The IEP ultimately included 300 minutes per year of occupational therapy, provided by the OT, in the general education setting. The Parents disagreed with recording this as 300 minutes per year (as opposed to a weekly or monthly amount). Despite the minutes being listed as yearly, it appears the Student actual gets OT monthly. OSPI notes that the special education regulations require that an IEP include a frequency of services but do not specify in what increments the frequency be recorded. Thus, it is not a violation of the IDEA that the occupational therapy minutes be listed as yearly. Although, the Parent's points about the Student needing a consistent schedule, developing rapport with providers, and struggling with transitions are valid with respect to when the sessions with the OT are scheduled. OSPI recommends the team consider whether, based on the Student's unique needs, a weekly or monthly occupational therapy frequency would make more sense.

Finally, the Parents requested an increase in occupational therapy minutes, which the IEP team considered and addressed in prior written notices. The Parents do not feel that the current occupational therapy services are appropriate for the Student, based on his needs. Ultimately, the District members of the IEP team did not agree that an increase in therapy minutes was warranted. OSPI notes it took time to address this, as the team ran out of time at previous meetings; however, overall, the District followed IEP procedures to consider the request and document the outcome in a prior written notice.

OSPI finds that generally, the District has followed procedures with respect to IEP development related to occupational therapy, even given current disagreement about the amount of services. OSPI finds no violation. Although, OSPI expects the IEP team will reconsider the Student's occupational therapy needs following the completion of the IEE.

Least Restrictive Environment (LRE): The Parent's primary allegation with respect to placement appears to be the District's offer to add a pull-out social skills group to the Student's IEP.

Generally, districts shall ensure that the provision of services to each student eligible for special education, shall be provided to the maximum extent appropriate in the general education environment with students who do not have disabilities.

To start, the Student's IEP includes that the Student will spend 96.6% of his time in the general education setting, with speech language pathology, occupational therapy, and social/behavior being provided in the general education setting and only written language specially designed instruction provided in the special education setting. Upon investigation, the main issue that arose during the period investigated was that the case manager noted that during the IEP development process, some of the school team envisioned a "weekly pull-out social group" with the Student—although she noted the family and private providers were against that—and that in January 2022 the case manager offered to amend the Student's IEP to add a pull-out social skills group. The case manager proposed adding 30 minutes per week in the special education setting for a social skills group. The Parent's alleged the decision was predetermined and that a pull-out social skills group was not the Student's LRE. The Student's IEP team discussed this on January 21, 2022 at the IEP meeting, the team did not amend the Student's IEP to add a pull-out social group, and the District noted the Parents rejected this offer due to concerns about the setting.

The IEP was not amended outside the IEP process in this instance, nor was there predetermination as a suggested amendment is not predetermination. Further, the IEP team considered this idea and declined to amend the IEP. While the IEP team may need to consider the setting of services in future meetings, there has been no LRE violation here.

Mental Health Needs: Throughout the spring of 2021 and the 2021–2022 school year, the Parents raised concerns about the Student's mental health needs and at times, requested that counseling services or mental health services be included in the Student's IEP. OSPI finds three specific areas of concern with respect to this allegation.

First, at the February 10, 2021 IEP meeting, the Parents were told that the District does not "write counseling into IEPs." As a general statement, this does not align with the IDEA. Counseling can be a related service on an IEP if a student's disability related needs include a need for counseling. Also, at this meeting, the District stated, following a discussion of the Student's mental health needs, that this would be documented in a prior written notice. There was nothing in the prior written notice following the February 10, 2021 IEP meeting addressing the discussion of mental health needs or counseling. OSPI notes that prior written notice is a key procedural safeguard for a family and ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. Without the documentation of the mental health/counseling discussion in the prior written notice, the Parents were unaware of whether a decision had been made and potential next steps. This contributed to the overall delay in addressing this potential need.

Second, in fall 2021, the Parents continued to share concerns that the Student was struggling to transition back to school and shared concerns about his mental health. District staff shared they were seeing a lot of positives at school. It is clear the teachers and Parents were seeing different things, and that the Student was exhibiting different behaviors at home and school; however, the IEP team did not directly address the Parents' request for mental health support until planning for the November 2021 IEP meeting, when the principal stated in the agenda for the meeting that "[Parent] has stated need for counseling services due to anxiety at home. At school, the team has no relevant data to support the need for counseling at this time school setting to provide FAPE."

However, even then it does not appear the Student's IEP team specifically discussed counseling services and then later stated this discussion was pending the completion of the IEE.

While the IEE may provide necessary information for the discussion about mental health and counseling, OSPI finds the District provided the Parents with inaccurate information about counseling as a related service, failed to record discussions in prior written notices, and did not timely address the Parent's request for mental health support on the IEP during the 2021–2022 school year. OSPI finds a violation.

Finally, there is the issue of the behavior goals discussed at the May 2021 IEP meeting, that were then worked on by the District's BCBA and the Student's private BCBA. The goals were never added to the IEP. It is not entirely clear why but appears that, in part, it is because the IEP team did not consider the goals after the BCBA's worked on the wording. However, the Parent also believes the goals were removed from a draft IEP because the Parents requested the IEP team discuss what services would support those goals. Regardless, the IEP team appears to have agreed in May 2021 that additional behavior goals were needed and despite this agreement, the goals were never added to the IEP, nor does it appear the team revisited these goals this school year. OSPI finds the District in violation for failing to properly address these proposed goals despite IEP team agreement that such goals were needed.

Overall, OSPI finds a violation with respect to how the District addressed the Parents' request for counseling/mental health support and the proposed behavior goals. The District will be required to convene the Student's IEP team to discuss the Student's mental health needs and whether there is a need for the originally drafted behavior goals (or an updated version of those goals).

School Refusal Behaviors & Other Behaviors: During the 2021–2022 school year, the Parent raised concerns that the Student was exhibiting school refusal behaviors—for example, the Student having difficulty getting ready in the morning for a variety of reasons and being between 5 and 25 minutes late for school. The Parents collected their own data on the Student's attendance and regularly provided the District with updates about the Student's challenges getting to school. The Parents also reported concerns about the Student eloping and having negative social interactions. The District's documentation indicated the District staff did not share the concerns or see those negative behaviors. These concerns largely related to and are intertwined with the functional behavioral assessment (FBA) issues (discuss below). OSPI finds that the District did respond to the Parent's concerns in this area in the FBA; the District, however, disagreed with the Parents regarding the behaviors of concern, noting:

The school team indicated that other than slight tardiness, they did not see the same behaviors at school that the Parent reported. As such, the FBA is focused on tardiness and not the other behaviors identified by the Parents, as they have not been seen by the school in a way that impacts the Student's learning or the learning of his peers. The Parents expressed concerns about the lack of specificity in the FBA...

Subsequently, the Parents requested, and the District granted, an IEE, which is in progress. Overall, while OSPI finds there was a delay related to the FBA (discussed below), OSPI does not find a

separate violation here and notes the District has addressed the Parents concerns through the FBA and IEE.

Other Development Concerns: During the investigation, the Parent also raised concerns about the development of the January 2022 IEP with respect to an accommodation added for in-person learning. The IEP team added the following to the IEP:

...The team acknowledges that student had difficulty accessing remote instruction and makes more progress through in-person learning. As such, if the school or classroom moves to remote instruction for an extended period of time due to health-related concerns, the student will receive [specially designed instruction] in-person on a modified schedule, if the health condition of student and staff allow for it and if in accordance with guidance from the Department of Health and OSPI. Due to the unpredictability of COVID-19 and related guidance, the school may not always be able to provide in-person [specially designed instruction] for all qualifying areas, and recognizes that in this situation, the team will consider whether recovery services and/or comp. ed. is required.

The Parents disagreed with this wording, proposing that the accommodation read: "If the school or classroom moves to remote instruction for, the student will receive education, including SDI in-person. The team will meet and consider whether and which recovery services and/or compensatory education [Student] needs." The Parents also stated that the wording included in the IEP was not what the team agreed to; and that the special education director stated he would need to check the wording, which the Parents argued meant the decision was not made by the IEP team.

Overall, OSPI finds that the team determined an accommodation for in person learning was necessary but disagrees about the wording. However, the District documented this in the IEP as its proposal for this element of the Student's FAPE. OSPI finds that the District's wording is not inappropriate, as there may be emergency situations where the District must first assess health and safety requirements before committing to providing the Student in-person instruction. Further, the District commits to consider recovery and compensatory services if this situation presents itself. OSPI does not find the District's offered accommodation to be a violation. If the Parent continues to disagree with the wording, the Parents can request that the IEP team revisit this accommodation. Importantly, the District noted that since adding this to the IEP, there have been no instances of the District needing to move to remote instruction.

Issue Three: Functional Behavioral Assessment (FBA) Timeline – The Parents alleged the District failed to complete the FBA within 35 school days. The Parents explained this had a variety of negative impacts on the Student, including the delay in having data available to use for "accurate present levels and program planning" and that a timely FBA would have prevented incidents the Student has had "with his peers at school, especially during unstructured activities when staff is not focused on supporting him."

An FBA is generally understood to be an evaluation of a student, to assist in determining whether the student is, or continues to be, a student with a disability. As with other evaluations, the district must complete the FBA within 35 school days after the district received consent.

The Parents signed consent for the FBA on January 24, 2021. The District acknowledged that the FBA was not completed within 35 school days, for a variety of reasons. While OSPI notes that some of the reasons behind the delay were reasonable—including efforts to ensure Parent input and coordination and collaboration with the Student’s private BCBA—the fact remains that the FBA was not considered complete by the District until a final draft was sent to the Parents in December 2021, nearly 11 months later. OSPI agrees that the delay in the FBA had impacts on the Student’s IEP development and services. See, for example, above discussions of the behavior goals and requests related to mental health needs, and OSPI notes the District currently is considering the Parent’s request for counseling services to be pending the completion of the IEE. Even if some of the delay was initially understandable, overall, the failure to complete the FBA in a timely manner was unreasonable. OSPI finds a violation.

The District noted the Parent requested, and the District granted, an IEE for the FBA in December 2021. Once the IEE is complete, OSPI will add corrective actions—including potential compensatory education hours if the IEE results in additional special education services being added to the Student’s IEP. The District will also be required to provide training on conducting FBAs to those staff involved at the Student’s school.

Issue Four: IEP Invitations – The Parents alleged the District failed to send meeting invitations that “included who will be attending the meeting and their role.”

An IEP meeting notification must, in part: indicate who will attend a scheduled meeting; and, the purpose of the meeting. The notice should also inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. Importantly, the regulations do not require a specific form be used for a meeting notification, but rather outline the information that must be conveyed.

Here, while there were meeting invitations included in the documentation of the District’s response, it does not appear from the email documentation that these invitations were regularly sent to the Parents prior to meetings. Some of the invitations were incomplete notices or were sent after meetings with draft IEPs. However, others were fully drafted like meeting notices regarding the November 2021 IEP meeting, which do not appear to have been sent to the Parents.

However, as stated above, the regulations do not require the meeting notice to take any specific format, and here, the Parents were generally provided information about the meetings through emails. The District stated that often, the IEP team meetings were scheduled at the previous IEP meeting, and that the general topics for the meeting were already discussed or were the continuation of previous meeting agenda. As examples:

- Prior to the February 10, 2021 IEP meeting: The principal sent the Parents and the other members of the IEP team the link to the meeting Zoom; at a previous IEP meeting, the Parents agreed to excuse the SLP; and, the February 3, 2021 prior written notice indicated the team agreed at that meeting to meet again on the 10th.
- Prior to the February 25, 2021 meeting: The principal sent the Parents and other IEP team members a link to the meeting. According to the District’s response, at the February 10 IEP meeting, the team agreed a smaller group would meet to discuss the Student’s AT needs on February 25th.

- Prior to the May 5, 2021 IEP meeting: Email discussions document the Parents and members of the IEP team discussing scheduling a meeting to discuss the FBA and who should be at that meeting; prior to the meeting, the principal confirmed that all members of the IEP team were set to meet.
- Prior to the January 2022 IEP meeting, the District emailed the Parent's a copy of the IEP meeting invitation and agenda. The meeting invitation included the names and titles of the invitees.

Overall, OSPI finds that the email discussions about scheduling meetings, when taken all together, contained the required meeting notice information—emails provided the date and time of meetings, links to the Zoom, the email recipients regularly included all members of the IEP team, and discussions of the meeting agenda and topics provided the purpose of the meeting. OSPI finds no violation.

Although, while OSPI finds no violation, it does note that the Parents likely had to work harder than necessary to determine who all was invited to each meeting. Since the District seems to be drafting the meeting notices, as they were included in the documentation for the complaint, OSPI strongly recommends the District send the actual meeting notice to the Parents prior to any future IEP meetings instead of relying on a compilation of emails.

Issue Five: IEP Team Membership – The Parents alleged the IEP team was often missing members—such as the AT specialist—that they had asked that the “AT specialist to attend meetings to be a part of discussions about assistive technology”—and that the District BCBA (or a psychologist or someone with a mental health background) did not regularly attend IEP meetings, even when those topics are on the meeting agenda.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student; not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

The District, in its response, stated that while attendance varied at each meeting, the IEP meetings were attended by the required members of the IEP team, including the Parents, principal or assistant principal, general education teacher, OT, SLP, and the special education teacher. The AT specialist attended some of the meetings when AT was at issue, as did audiologist. The Student's outside providers and family's advocate attended IEP meetings, as well as District special education supervisors. OSPI notes the documentation largely showed that the required IEP members attended each IEP meeting.

While the AT specialist and a District BCBA are not team members specifically required by the state regulations, the IEP membership regulation does include “where appropriate, not less than one special education provider of the student”, a member that can interpret the instructional

implications of evaluation results, and any other individuals with knowledge or special expertise regarding student, including related services personnel. In short, OSPI finds there are times when other individuals, like the AT specialist or a behavior expert, would be required to attend the IEP meeting depending on the topics to be discussed at the meeting.

First, at the May 2021 IEP meeting, the team planned to discuss the FBA; however, no District FBA or behavior specialist attended the meeting. It is not clear that other District members of the IEP team could “interpret the instructional implications of evaluation results [i.e., the draft FBA.]” OSPI finds that a District BCBA or behavior specialist should have attended this meeting, given the specific purpose of the meeting. OSPI finds a violation. However, OSPI does not find that there was an impact on FAPE for the Student as the Student’s private BCBA attended the meeting and thus, the IEP team was able to discuss the draft FBA and proposed behavior goals.

Second, at the November 2021 IEP meeting, the AT specialist was unavailable and thus did not attend the meeting. This is despite the Parents and school staff discussing via email prior to the meeting that the proposed agenda would include AT. While the AT specialist may not need to attend every IEP meeting, the Parents have specifically requested to discuss the Student’s AT needs and at such a meeting, the AT specialist would need to be present. It is difficult to tell the impact of the AT specialists’ absence in November 2021—on the one hand, the documentation overall is clear that the team ran out of time at the November 2021 meeting to discuss much other than the FBA. However, the AT specialist did not attend the January 2022 IEP meeting either (but did attend the March 2022 IEP meeting). The documentation does support that the discussion of AT was delayed given the AT specialists’ unavailability at the November 2021 and January 2022 IEP meetings. OSPI finds a violation. As OSPI has already ordered above the completion of the AT reconsideration and training related to the Student’s accommodations, that training will address AT and is, OSPI determines, an equitable remedy for the violation here.

Issue Six: Parent Participation – The Parents alleged they were not provided the Student’s educational records when they requested them and that this limited their ability to participate in the IEP meetings. In particular, allegations were made with respect to records requested prior to the November 2021 and January 2022 IEP meetings.

Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student’s IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child’s educational program; participate in discussions about their child’s need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments. Districts must permit the parents of a student eligible for special education to inspect and review, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP and in no more than 45 calendar days after the request has been made.

Here, the Parents requested all records the FBA was based on and the Student's attendance report on November 23, 2021, prior to the November 24, 2021 IEP meeting. The District acknowledged in its response that it did not provide the records prior to the IEP meeting. However, the District stated that given the short turnaround and based on the fact that the Parent had her own attendance data and indicated the District's attendance report was inaccurate, the District stated it did not believe the failure to provide the record impacted the Parent's ability to meaningfully participate in the IEP meeting.

Similarly, the Parent requested on January 18, 2022, records from the SLP and OT. The District again acknowledged that it did not provide the Parent with the records prior to the IEP meeting. The District stated the principal "attempted to gather the records before the meeting, but was unable to do so due to confusion surrounding production (she requested the logs from special education records, which informed her that all records had already been provided to the Parent)." Further, the District noted the OT responded to the Parent's questions and subsequently attended a January 31, 2022 meeting focused on discussing occupational therapy.

OSPI finds a violation as the District did not provide records as outlined in WAC 392-172A-05190. OSPI notes that some of the challenge with records is that there seems to be an unclear process for requesting records—in some cases, the Parent is requesting records directly from providers, in others, requesting records from the main District record email address. Additionally, the Parent did request records shortly before the IEP meetings; although OSPI notes the Parent does have an established accommodation to receive documents a week prior to meetings. Overall, OSPI finds that an appropriate corrective action will be for the District to develop a specific process, with Parent input, for communicating about records requests and providing records to the family.

However, OSPI does not find this materially impacted the Parents' ability to participate in the IEP meetings. For example, the Parent had her own attendance data and thus it is not clear the lack of District attendance data prior to the meeting significantly impede participation. The team was still able to discuss the FBA and attendance at that meeting. Similarly, the lack of OT and SLP records does not seem to have significantly limited the Parents' ability to participate in the January 2022 meeting. While another meeting was required to discuss occupational therapy, some of this was due to the number of agenda items and time it took to discuss other items; OSPI does not find that the need for another meeting was solely attributable to the lack of records.

Further, the documentation in the complaint indicates the Parents were active participants in the Student's educational planning and process. The Parents attended and participated in all IEP meetings, often with an advocate and their private providers. The Parents asked questions, made suggestions and requests, and some of those things were incorporated into the IEP. The Parents also provided input, feedback, and concerns via email. There were also areas of disagreement, although the documentation indicates that areas of disagreement were considered and discussed, even if disagreement continued. Overall, aside from the records violation, OSPI does not find the Parents' participation in the IEP process was denied and finds no parent participation violation.

CORRECTIVE ACTIONS

By or before **May 6, 2022, May 20, 2022, June 17, 2022, August 19, 2022, September 23, 2022, October 7, 2022, and October 28, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Assistive Technology Reconsideration & IEP Meeting

By **May 20, 2022**, the District will complete an AT reconsideration/"task-tool analysis" to determine the Student's current AT needs.

By **June 10, 2022**, the Student's IEP team, including the AT specialist and a behavior specialist or BCBA, will meet to discuss AT and the behavior goals drafted in May 2021, as follows:

- The results of the AT reconsideration and Student's current AT needs;
- Any need amendments to the IEP with respect to AT;
- The plan for how AT services and devices will be implemented;
- Any specific strategies and supports needed to implement AT and help address the Student's refusal behaviors;
- class; and,
- The team will discuss the behavior goals drafted in May 2021; whether those goals are still relevant or need to be updated; whether different or additional behavior goals need to be added to the IEP; and whether the current social emotional/behavior specially designed instruction is sufficient to address goals or whether additional services and supports are needed. OSPI notes this conversation may need to be continued once the IEE is completed; however, the IEP team can address the already existing draft behavior goals sooner.

The IEP team should also determine whether a subsequent IEP meeting is needed to discuss any of the above and if so, discuss a tentative date for the next meeting.

By or before **June 17, 2022**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the Student's IEP; and, d) any other relevant documentation.

Compensatory Education

By or before **May 13, 2022**, the District and Parent will develop a schedule for 10 hours of compensatory education in writing.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher and/or the occupational therapist. Services will be provided in a 1:1 setting and be in-person. The services must be provided outside of the school day and may be provided on the weekends or during District breaks. The District will provide OSPI with documentation of the schedule for services by or before **May 20, 2022**.

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 or

provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **October 21, 2022**.

By or before **October 28, 2022**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the 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 **October 28, 2022**.

IEP Team and Teacher Training

By **September 16, 2022**, the District will conduct a training with the Student's IEP team, including all District teachers (special education, general education, and specials—e.g., PE teacher, music teacher, etc.) and providers working with the Student, and the Student's Parents if they wish to attend. The training should be led by the District's BCBA or other behavior specialist, with collaboration and input from any other District staff with expertise in working with students with autism and with refusal behaviors. If the District would like, they may collaborate with the ESD or an outside trainer.

The training will focus on practical strategies for providing and implementing accommodations and AT for the Student, including strategies around addressing the Student's refusal or reluctance to use certain accommodations and AT.

By **September 23, 2022**, the District will provide OSPI with documentation regarding the training, including 1) A sign-in sheet; 2) Any materials developed for the training; and, 3) The Student's class schedule and special education services schedule so OSPI can cross reference with the sign-in sheet to determine all required members attended.

Documentation of IEE & Additional Services

By **May 6, 2022**, the District will provide OSPI with a status update on the IEE—i.e., have providers been selected, are contracts in place, what is the estimated timeline for completion?

Following this, OSPI will add the following corrective action items and deadlines: a deadline to provide OSPI a copy of the IEE; a deadline for the IEP team to meet and discuss the IEE and determine necessary amendments to the FBA and/or IEP; and a deadline for OSPI to review the Student's IEP and if additional special education services in social/behavior, mental health, or occupational therapy are added to the IEP, OSPI will order compensatory education hours to address the delay in completing the FBA.

Records Request Process

By **May 20, 2022**, the District will propose a process for the Parents to request educational records and communicate the proposed process to the Parents. This process should include a point person for communication and an email address or platform to streamline requesting and providing

records. For example, the District could create a shared dropbox or a shared document that includes a table, such as:

Request & Date	District Notes	Record	Needed Follow Up
Example: Parent requesting SLP logs, April 27	Requested communicated to SLP on April 28 SLP stated she will provide logs on May 4	Link to Record Record emailed on 5/4	

Within two weeks of receipt, the Parents will be given an opportunity to provide input into the processed process. In other words, this should be something that works for both the Parents and District to overall streamline and decrease confusion about records if requested. If part of the process needs to include copying or going through the District’s main records office, that is acceptable.

By **June 17, 2022**, the District will provide the plan for the records request process with Parent input to OSPI for review. OSPI will provide input or approve the process.

Progress Report

By **May 20, 2022**, the District will update the Student’s existing 2021–2022 progress reports and provide the updated versions to the Parents and OSPI. The updates should be clearly noted as updates and should address the amended IEP goal baselines and include comments and/or data addressing the rate of progress based on the amended baselines.

DISTRICT SPECIFIC:

FBA Training

The District will develop and conduct a training on conducting FBAs. The District will provide the trainer with a copy of this decision, SECC 22-14.

The following District staff will receive training: District special education administrators and psychologists for the region the Student’s school is located in, and anyone at the Student’s school who are involved in conducting FBAs or gathering data for FBAs. The training will cover the following topics:

- FBA requirements;
- District practices around data collection for FBAs;
- And best practices for students exhibiting school refusal behavior.

The training will include examples.

By or before **June 17, 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 **August 19, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 26, 2022.

By **September 30, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 7, 2022**, 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.

RECOMMENDATIONS

OSPI notes the District included meeting notices/invitations in the documentation for the complaint but did not regularly provide these notices to the Parents prior to the meetings. OSPI strongly recommends the District send the actual meeting notice to the Parents prior to any future IEP meetings instead of relying on a compilation of emails to convey that information.

The Student's IEP included two different amounts of audiology support: 90 minutes per year in the "program accommodations/modifications and support for school personnel" section and 60 minutes per year on the service matrix. OSPI recommends the Student's IEP team clarify the amount and correct the IEP as needed. It is possible that, if the Parents agree, this amendment could occur without a meeting.

OSPI recommends the team consider whether, based on the Student's unique needs, a weekly or monthly occupational therapy frequency would make more sense. As discussed in the decision, despite the minutes being listed as yearly, it appears the Student actually gets occupational therapy monthly.

Dated this ___ day of May, 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.)