

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-27

PROCEDURAL HISTORY

On February 27, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Central Kitsap School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 1, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on March 2, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On March 20, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on March 21, 2023. OSPI invited the Parent to reply.

On April 3, 2023, OSPI received the Parent's reply and forwarded it to the District on April 4, 2023.

OSPI considered all the information provided by the Parent 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 28, 2022. 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.

ISSUE

1. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, including but not limited to the Student's individualized transition plan (ITP), since March 2, 2022?

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

Background: 2021-2022 School Year

1. On September 1, 2021, the District held its first day of instruction. The Student was attending a District high school.
2. In October 2021, the Parent proposed to shorten the Student's school day and the District accepted the proposal.
3. The Student's school schedule was: Mondays and Wednesdays, 10 am to 12:45 pm; Tuesdays, 10:30 am to 12:55 pm; Thursdays, 9:15 a.m. to 11:50 am; and Fridays, 11:15 am to 1:20 pm.
4. On October 5, 2021, the most recent special education evaluation of the Student was completed. At that time the Student was almost twenty years old and a twelfth grader. The Student was eligible for special education services under the category of Autism, and the reevaluation report recommended the Student receive specially designed instruction (SDI) in reading, writing, math, adaptive, social/emotional, and speech.
5. On November 1, 2021, a prior written notice (PWN) was drafted that stated: "After reviewing all available data, the district determined that growth and progress toward IEP goals have been maintained since March of 2020 and therefore [Student] is not eligible for Recovery Services."
6. On November 4, 2021, the Student's IEP team met to draft the Student's annual IEP. This IEP also had an individualized transition plan (transition plan). The transition plan's "Education/Training Goal Statement" provided:

After graduation, [Student] will receive on-the-job training and job coaching from a state/community supported agency. He will require 1:1 assistance and supervision to learn and participate in work tasks.

...

[Student's] work and practice experience includes: following a daily schedule that will teach independence. He has goals and data will be kept to show an increase of non-verbal direction. He also is working towards helping in the cafeteria washing tables and being taught to fold up or fold down tables and pushing them to the side of the cafeteria. [Student] has experience and continues to work on: wiping down the table and chairs, and vacuuming.

Transition Services and Coordinated Set of Activities

Instruction:

[Student] curriculum work instruction: Unique Learning Systems with News2You. [Student] demonstrates adequate pre-vocational skills such as following simple verbal directions given processing time. Directions broken down into smaller tasks with some visual cuing.

[Student] work and practice experience includes: following a daily schedule that will teach independence. He has goals and data will be kept to show an increase of non-verbal direction. He also is working towards helping in the cafeteria washing tables and being taught to fold up or fold down tables and pushing them to the side of the cafeteria. [Student has experience and continues to work on: wiping down the table and chairs, and vacuuming.

Related Services for Education Transition Needs:

[Student] will work in the classroom and school with special education job coaches under the direction of a special education teacher and district job coach specialists. He will also be able to access direct [speech language pathologist] SLP services. Consult with [occupational therapist] OT and have regular 1:1 paraeducator support.

The "Employment Goal Statement" provided:

After graduation, Student will be employed in an entry-level supported position at a community-based work site with full or high level of assistance. This student will be employed in a work field relating to custodial work or assembling. This will be related to custodial work, assembly, restocking, facing products in a warehouse or retail setting after customer hours. He will be employed part-time and/or do volunteer work.

Transition Services and Coordinated Set of Activities

Development of Employment Opportunities

[Student] will practice classroom and/or in building jobs that entail working in the cafeteria after lunch. [Student] will be practicing closing the lunch tables and pushing lunch tables to the side of the cafeteria. This year in the Transition Program, he will have school-based jobs and work with YEPP (District's youth employment preparation program).

And the transition plan's "Independent Living Skills Goal Statement" included:

After graduation, [Student] will live in a supervised and supported living environment, either at home or in a group living situation. He will need significant assistance and supervision in his living situation with all aspects for safety and redirect impulsive behaviors. Given the support of an adult for redirection and supervision, [Student] will meet his daily living needs.

Transition Services and Coordinated Set of Activities

Community Experience

[Student] in past years has gone on regular community outings with his classmates to the movies, parks, grocery stores, and the mall, post Covid he has done three community outings, due to transition times causing escalations in [Student's] behavior, community outing are not happening at this time. He will also practice acknowledging community signs such as restroom, stop, crosswalks, etc.

...

Outside agencies are welcome at parent invitation throughout [Student's] secondary years; more specific facilitation of outside agency participation will begin when [Student] is closer to leaving the public school setting. In the past, a meeting with the District YEPP and DVR (Department of Social and Human Services, Division of Vocational Rehabilitation) was conducted and the decision to meet closer to [Student's] exit was determined.

7. According to the District's website:

YEPP is a . . . District program that assists special needs students (ages 16-21) with work experience in the community. While participating in the program students earn school credit for both non-paid work and paid work placements. Teachers begin by identifying a student's individual abilities and interests with the needs of the individual employees and then works with the staff of the YEPP program for placement. When a student is matched with a site a Job Coach is provided to help train the students who need extra support and time to learn the necessary skills to be independent on the job. Having student support at the site also ensures that the needs of the employer are also being met by the work that the student is doing.

8. A PWN dated February 14, 2022 stated:

Thank you for agreeing to the revision without a meeting. The team inadvertently left written expression off of the service matrix and IEP. The service matrix has also been adjusted. [District] stands ready to offer a full day every day of services each week. [Student] attends currently 915 minutes per week. He does need two paraeducators to support him when he attends, thus the two paras in the service matrix.

9. The Student's amended February 14, 2022 IEP provided in part:

The Student's percent of time in a general setting was 0% and LRE placement in general education classes was 0-39%. The IEP included 1:1 paraeducator support for 1,785 minutes weekly for individual support for academics, activities, and safety in or to learn adaptive behaviors. A second paraeducator support for 1,785 minutes/weekly to access academics, activities, and learn adaptive behaviors was also included. The IEP indicated this paraeducator support was necessary to support de-escalation procedures.

The IEP team determined the Student was not eligible for extended school year (ESY) services because the data and information available did not raise concerns for Student's regression or need for recoupment.

10. On February 28, 2022, the complaint investigation timeline for the present case begins.

11. On March 11, 2022, Student's teacher emailed Parent as follows:

I just wanted to let you know that last week and this week have been a bit harder for [Student] to be calm at school. I just wanted to let you know that we have seen a lot more of his previous escalation behaviors, such as kicking, hitting, spitting and throwing materials off of his desk and other peoples as he walks by. He has also struggled with sitting safely at his desk for longer periods of time as well as with all of these things while walking in the hall during transitions.

- 12. On March 18, 2022, the Student’s teacher emailed the assistant principal as follows: “I called [Parent] to pick up [Student] at 12:30, he was unable to calm down and the intensity and frequency of his escalations were amping up. . . This has been a trend, especially on Fridays.”
- 13. On April 27, 2022, the Student’s teacher emailed the assistant principal detailing that she called Parent to pick up Student because he was escalated and could not calm down. The teacher was going to file an incident report.
- 14. A June 2022 progress report provided the following information about the Student’s progress:

Goal Area	Progress
Reading	Skill emerging
Math	Goal was met
Social, Emotional, Behavior	Sufficient progress
Adaptive	Sufficient progress
Vocational/Transition	Skill Emerging
Written Expressions	Skill Emerging

Regarding the vocational goal the progress report stated: “[Student] has done well following steps on task list in the restroom and at his desk.”

- 15. On August 16, 2022, the District’s assistant director of special services-secondary (assistant director) emailed Parent as follows:
 - As you are aware [the District] and [the behavior consulting company] are partnering to develop a program for [the Student] that will support him in the community with some routine opportunities to engage with students at [his school]. We are working on the final details of the contract and hope to have that fully executed by the end of next week. Our next steps in this partnership will be to engage in an IEP team meeting...to review [Student’s] IEP, articulate on paper what [Student’s] program will look like, and make amendments to reflect the targeted goals.

2022-2023 School Year

- 16. On September 7, 2022, the District held its first day of school for the 2022-2023 school year. The Student was enrolled in a District high school as a 12+ grader, and his February 14, 2022 IEP was in effect.
- 17. On September 12, 2022, the assistant director emailed the Parent in part as follows: “We discussed doing a re-evaluation as we were considering the out of district placement, but we did not complete the process.”
- 18. On September 23, 2022, the Student’s IEP team met and amended his IEP. The IEP provided the Student SDI as follows:
 - Speech/Language: 60 minutes/monthly (provided by and SLP, in a special education setting).

- Math: 155 minutes/weekly (provided by behavior technician (BT), in a special education setting).
- Reading: 200 minutes/weekly (provided by BT, in a special education setting).
- Vocational/Transitional: 205 minutes/weekly (provided by BT, in a special education setting).
- Social, Emotional, and/or Behavioral: 255 minutes/weekly (provided by BT, in a special education setting).
- Adaptive: 255 minutes/weekly (provided by BT, in a special education setting).
- Written Language: 175 minutes/weekly (provided by BT, in a special education setting).

The Student's percent of time in a general setting was 0% and LRE placement in general education classes was 0-39%. The IEP included services from a registered BT for 1,260 minutes weekly. The IEP noted the Student required the support of three behavior specialists, in the community, at all times for safety and instruction.

The IEP team agreed that the Student would be served in the home and community with instructional support from a behavior consulting company, and the behavior consulting company will transport the Student to and from instructional settings. The Student was not eligible for ESY. The IEP stated:

The IEP team determined [Student] will be best supported by the community ABA services of [behavior consulting company]. The [behavior consulting company] team has been specifically designed, structured, and staffed to facilitate the least restrictive environment, enhancing [Student's] ability to work toward and achieve his IEP objectives...He is being served [by the behavior consulting company] ABA services out of the building five days a week.

...

[Student] requires the support of his [behavior consulting company] team to help him be successful with his academic, social, an adaptive, and behavioral needs.

19. In the September 2022 IEP, the transition plan included the following goals, transition services, and activities:

1. Measurable Post Secondary Goals - Education

Education/Training Goal Statement

After graduation, [Student] will receive on-the-job training and job coaching from a state/community supported agency. He will require 1:1 assistance and supervision to learn and participate in work tasks. He will train on job-specific skills that will be used in settings such as after hours facing items in the retail settings or warehouse related work in a retail setting outside of customer hours.

Transition Services and Coordinated Set of Activities

Instruction:

[Student] demonstrates adequate pre-vocational and vocational skills such as following simple verbal directions given processing time. Directions broken down into smaller tasks with some visual cuing.

[Student's] work and practice experience includes: following a daily schedule that will teach independence. He has goals and data will be kept to show an increase of non-verbal direction. [Student] has experience and continues to work on: following a task list.

Related Services for Education Transition Services

[Student] is supported by [behavior consulting company] for his Education/Community Transition Needs. [Student's] program is provided predominantly in the community with opportunities to access peers in a school setting and in the community.

2. Measurable Post Secondary Goals - Employment

Employment Goal Statement

After graduation, Student will be employed in an entry-level supported position at a community-based work site with full or high level of assistance. This student will be employed in a work field relating to custodial work or assembling. This will be related to custodial work, assembly, restocking, facing products in a warehouse or retail setting after customer hours. He will be employed part-time and/or do volunteer work.

Transition Services and Coordinated Set of Activities

Development of Employment Opportunities:

Community employment/volunteer opportunities will be developed by [District] internship and transition coordinator, DVR/DDA, and supported by [the behavior consulting company] ABA services.

3. Measurable Post Secondary Goals – Independent Living Skills

Independent Living Skills Goal Statement:

After graduation, [Student] will live in a supervised and supported living environment, either at home or in a group living situation. He will need significant assistance and supervision in his living situation with all aspects for safety and redirect impulsive behaviors. Given the support of an adult for redirection and supervision, [Student] will meet his daily living needs.

Transition Services and Coordinated Set of Activities

Community Experience:

[Student] in past years has gone on regular community outings with his classmates to the movies, parks, grocery stores, and the mall, he will meet us at the community outings on Fridays with [behavior consulting company] team. The team will prep him for the outing if possible by visiting before joining the [school] transition class.

Adult Living:

To adapt to adult living situations, [Student] is currently able to get onto the computer and navigate his way around system to locate sites as needed for class activity. [Student] can write his first and last name and has memorized his address and phone number.

Daily Living Skills:

Daily living objectives for [Student] include: [Student's] current program includes adaptive skill and communication skill building. The development of self-advocacy skills and remaining focused in area for 30 minutes or more. [Student's] current program includes adaptive skill, social/emotional/behavior skill, and communication skill building. School staff and [Student's] family will work with him on skills such as making grocery lists, shopping wisely, and cooking. He will learn how to care for his

own clothes and living space. He is practicing measuring, following a schedule, following list of activities, cleaning up after himself after lunch, and using the restroom without excessive flushing.

20. A PWN dated September 23, 2022, provided in part:

A request was made by the family and outside behavior team to add additional time to [Student's] instructional week so that he may be able to complete the assigned activities.

...

District will honor the request to increase [Student's] instructional day by one hour, 5 days per week, with the intent of the team coming to together at a future date to evaluate [Student's] progress and whether adding additional time is necessary.

21. On October 5, 2022, an early triennial reevaluation was conducted at the request of the IEP team. The evaluation stated in part: "The IEP team has determined that the best delivery of services will be to provide [the Student] with community-supported ABA services through [behavior consulting company]."

22. On October 17, 2022, at 2:35 pm the behavior consulting company emailed the teacher as follows:

I'm wondering if you have any information about DVR and when we should be prepared for possible assessment. We'd like to just have a general idea of the time frame and what will be involved so that we can start to plan for how to incorporate needed routines into his current schedule.

23. Also, on October 17, 2022, at 3:51 pm Department of Social and Human Services (DSHS) sent the teacher the following email:

I am still working on gathering records and completing [Student's] eligibility. My current deadline is 11/14. Hopefully, we'll be done sooner. At that point I will start working on his Individualized plan for employment. I have 90 days to complete the plan. By the middle to the end of January, I will have the parents/guardians start selecting a vendor start building for the Community Based Assessment (CBA) to start in February. I am hoping to keep [behavior consulting company] involved as much as possible to support [Student] during this process.

24. On October 18, 2022, the behavior consulting company emailed the teacher: "If things are not ready to start till February that's not a lot of time in the community with services for [Student]! In your experience, is there any way to speed that up?"

25. On October 19, 2022, the teacher emailed the behavior consulting company as follows:

The services will continue for [Student], through DVR with a job coach even after he has exited from school services. The goal is just to get things initiated while students are still in school. The only part that I am involved in with this service is to help facilitate an initial meeting with someone from DVR.

26. On November 14, 2022, Parent sent the assistant director and cc'd DSHS the following email:

I have recently received a letter from...DVR, advising us that we are ready to move forward to selecting an employment goal and setting up an Individualized Plan for Employment for [Student]. But before I set up the meeting with DVR, I would just like to bring up with you Recovery Year. I do intend to request the district for a recovery year, as [Student] is, in all aspects, one of the students most impacted by the school's extended lock down during the pandemic. I was going to wait until spring to formally request for it but with the DVR process already on-going, I would just like the assurance that this will not jeopardize his chance for an extra school year, that we will not find ourselves in an either-or situation and he will be able to receive full DVR services for the whole duration of the Recovery Year.

27. On November 22, 2022, DVR sent the following email to the Parent and Student:

You have been determined eligible for services from the Division of Vocational Rehabilitation (DVR).

I have also determined that you meet the criteria for Priority of Service Category 1, 'Individual with a Most Significant Disability.' DVR is currently serving this Priority of Service Category. We can move forward with the next step in the DVR process.

The next step in the DVR process will be to help you select an employment goal and develop an Individualized Plan for Employment (IPE). We have 90 days from the date I determined your eligibility to develop and finalize your IPE. If you need more time, we may agree to extend this 90 day period.

28. On November 23, 2022, the assistant director emailed the Parent as follows:

I received your request for recovery services to be provided for [Student] in the 2023-2024 school year. I want to direct you to a prior written notice attached to an IEP team meeting held in November 2021 that states the following: 'After reviewing all available data, the district determined that growth and progress toward IEP goals have been maintained since March of 2020 and therefore [the Student] is not eligible for Recovery Services.'

Nonetheless, I understand that you believe that since November 2021, there may have been an additional need for recovery services due to COVID-19 disruptions. My recommendation is that the IEP team convenes in the spring to evaluate the progress that [Student] has made toward the targets that the team outlined in the IEP authored in September given the instructional programming that [Student] has received from [the behavior consulting company] team. If upon review of [Student's] rate of progress in the spring the team believes that additional instructional time is needed as a result of the COVID-19 disruptions, we can consider extending the current service model through August 2023, which is the current time frame for state-funded recovery services to end.

Regarding your concerns for [Student's] access to DVR services and the School to Work Program, I did want to assure you that he may enroll in their program regardless of when he exits from the...District.

29. On December 6, 2022, 8:28 a.m. the employment program sent the teacher the following message: "Just wanting to know if [Student] is going to take the recovery year and if he/parents want employment services. If so, I need to meet with them."

The same day, at 9:42 a.m. the teacher responded: "At this time there is no recovery year, that will be evaluated toward the end of the school year, is my understanding. I also believe his parents want to start with employment services."

30. On December 13, 2022, DVR sent the assistant director the following email:

I have scheduled a meeting to go over a vocational assessment and proposed Individualized Plan for Employment. We will also discuss vendor selection for the employment consultant and job coach that will assist [Student]. I have included 3 recommendations below for [Parent] and [Student] to call and interview, along with some questions to get the conversation started. It is not necessary to ask all of the questions. Just pick one or two to get the conversation started. It is really a conversation to find a good fit. [Parent] if you could call me a couple of days ahead of the meeting with your selection, I would be happy to invite that provider to the meeting to participate in the conversation. Please let me know if you have any questions or concerns, or if you are unable to make this appointment and need to reschedule.

31. A February 2023 progress report provided the following information about the Student's progress:

Goal Area	Progress
Reading	Skill emerging
Math	Goal was met
Social, Emotional, Behavior	Sufficient progress
Adaptive	Sufficient progress
Vocational/Transition	This goal will start with his job coach in February.
Written Expressions	Mastered

Regarding the vocational goal, the progress report stated: "Independent Task Completion – When given a known task and told to complete it while an adult is at least 10 feet away from him or even out of sight, [Student] will independently stay in the work area . . . and work, stopping as needed to engage in self-stimulatory behaviors or tics, working until the task is completed or up to 15 minutes, with two or fewer prompts to stay engaged per task across at least five different tasks, completing each task in at least three consecutive sessions.

32. On February 27, 2023, the Parent filed special education community complaint (SECC) 23-27 with OSPI. The Parent's complaint alleged:

[J]ob skills training and employment exploration goals in [Student's] IEP are not addressed/implemented according to the timeline set forth.

...

According to the Individualized Transition Plan of [Student's] IEP, at 13th Grade he was supposed to be 'looking at job exploration outside of the building'...The Covid school lockdowns had heavy detrimental impact on [Student's] behaviors. The school's effort and resources the past 2 years have been focused on managing these behaviors. By FEBRUARY

2022 (sic), the ITP goals still have not been implemented/met. A DVR File on [Student] was opened only recently (Nov. 2022).

...

I am respectfully requesting for compensatory services for one school year for [Student].

33. On February 27, 2023, the Parent emailed assistant director as follows:

I'd just like to inform you that I am making a request to OSPI for compensatory services for [Student]. I am mailing the request packet tomorrow, and your office will receive a copy as well.

I had to fill out a Complaint form to make my request. 'Complaint' is a little too strong a word because, as we all know, some of the IEP goals were made difficult to meet due to the impact of the covid school closures on [Student]. The team did the best it could given the circumstances. I believe though that an extra school year will help address those gaps in his IEP and what have been accomplished so far (with the involvement of [behavior consulting company]) and help ensure success when Student] leaves the educational system for good.

The IEP team and the district have been very supportive, receptive and even creative in addressing the changes and challenges of Student's] behaviors. I also believe that the relationship between the school and my family is that of mutual respect. For all these things, I will always be grateful.

34. A PWN dated March 6, 2023 provided in part:

The purpose of this prior written notice is to inform you that the...District will be terminating IEP services due to graduation.

...

[Student] has completed graduation requirements per credit check, review of IEP goals and will no longer receive special education services upon leaving high school.

Providing special education services after graduation was considered and rejected. Once graduated, we cannot provide special education services under current Washington State law.

35. On March 9, 2023, the Student's teacher and board-certified behavioral analyst (BCBA) drafted a short memo that stated in part:

The transition program includes providing students with supported opportunities at job sites and community outings. Community outings were almost always unsafe due to the serious behaviors of concern exhibited by the [S]tudent on the bus. Students travel to job sites in district vans and on the bus [Student] used a harness. This was not an option for the vans to the jobsite nor did we have the 3:1 ratio needed to safely support [Student] at that time. We attempted to provide cafeteria cleaning (as a jobsite, as other students in our program do this every year) for [Student] multiple times, this adapted to cleaning his own desk in the classroom, as transitions were the most challenging part of the day for [Student]. [Student's] tendency to elope was much less of an issue in the classroom, where we had more supports in place, such as extra staff and a safe quiet place for [Student] to decompress and take breaks.

36. On March 20, 2023, the District submitted its response, which provided in part:

The District denies that Student's IEPs, including his [transition plan], have not been properly implemented since March 2, 2022.

...

Data and email communication, along with Student's progress reports, show that the District implemented Student's IEP, including his [transition plan], since March 2, 2022...Student is in the District Transition Program and is participating in a combination of out-of-school community events that incorporate all of his goals, along with lunch at the high school two days a week to interact with his peers...Student also began the DVR program, as planned, in February 2023.

Student's progress reports show that he is progressing on all but one goal – the goal specifically related to working with his job coach through DVR...The November 2021 IEP noted that the team had previously agreed to wait on re-engaging with DVR until closer to Student's exit from the District...Per that prior agreement, Parent and DVR met in December of 2022 and services began on time in February 2023. And while Parent has raised concerns that starting in February 2023 with DVR was too late, that was a function of that prior IEP team decision...Further, the District reassured her that DVR services may continue after Student exits school services.

The District has collaborated well with the family, including listening to Parent's concerns and implementing changes to Student's IEP, along with contracting with [behavior consulting company] to provide additional support. It has implemented Student's IEP and transition services and, through this implementation, Student has shown progress on his goals.

37. A March 2023 report of services from the behavior consulting company stated in part as follows:

- We provide 22.5 hours a week (1,350 minutes) of specially designed instruction...
- Topic/areas of specially designed instruction are built off of goals which can be found in his IEP.
- [Student] has attended 100% of days based on the...District calendar and has received 100% of weekly hours/minutes of specially designed instruction time allotted by our contract with...District. No days have ended early due to [Student's] behavior.

...

During the 2022-2023 school year with [behavior consulting company's] 3:1 support [Student] has made progress on IEP goals (reading, writing, math, social/emotional, speech/language). He has shown tremendous progress with consistent 3:1 support behaviorally in routine activities during his school week. However, this team is just starting to fade from 3:1 to 2:1 in certain environments and specific activities that are highly reinforcing for him. . .

With sufficient support, [Student] has made significant progress during this last school year evidenced by his ability to walk without physical escort or support in the community, and actively participating in a number of community activities with and without his peers. However, this is possible with the level of therapeutic support he has received. . .

The biggest barrier to success out of school is maintaining behavioral regulation (calm, appropriate distance from others, keeping in proximity to support personnel, maintaining safe hands and body in all environments). [Student] is not yet able to regulate when his routine is disrupted. For example, if one of his regular team members is out for the day and a trained substitute is present to accommodate the 3:1 ratio, he can struggle to maintain calm and regulated behavior to complete his routine activities throughout his school day without additional intervention strategies and incentives in place. [Student] needs time to learn how to transition from environment to environment without 3:1 support. With this specific, very experienced team of 3, he has come a long way since the start of this school year. [Student] has demonstrated his ability to request for breaks and additional time to regulate within various community environments, participate in routine activities and interactions with his friends, begin to use his phone to follow a script to communicate with others, as well as use his phone to make and follow lists to find preferred items at stores within his community. Additionally, [Student] has shown his ability and his resilience to return to stressful/provoking environments with his team and be able to regulate within the environments to continue the outing or safely transition out of the environment if heightened dysregulation has been observed. [Student] has become an active member of his community participating in outings to various different restaurants, libraries, stores, and other community locations as well as increasing his independence in paying for items or meals he is purchasing. Generalizing these skills to a novel team, job coach, job placement, and routine activities will require strategic planning and fading of the previous team to ensure that [Student] is set for success.

Without the appropriate vocational skills that were to be acquired during the school transition program, it is a concern of the incoming vocational team that [Student] could be deemed ineligible for vocational services by DVR if they are not able to get enough transition training time. The vocational team needs sufficient transition/training time to be sure they can effectively support [Student] during any emergency situations. To date, [Student] has had two assessment observations from his DVR case supervisor on Tuesday February 7th 10:15 AM-11:30 AM and Wednesday March 8th 10:30 AM-11:30AM. [Student] will not be able to meet with his job coach until his assessment process has been completed over the next following months if he is deemed eligible to obtain these services. The current team at [behavior consulting company] is confident that with sufficient transition/training time with his incoming vocational team, he has the potential to experience a rich vocational life following school.

. . . As the relationship has built between [Student] and his 3:1 team, we have been able to see reduction in elopement, throwing, head hitting, and spitting, which in turn have allowed for more skill acquisition of pre-vocational skills to be targeted (ex. Finding items in stores, making/following 3-5 step lists, paying for items). . .although we have been able to begin to introduce these targets, the process of learning these skills is still in the initial stages as we have not been able to obtain job placement for [Student]. *If* [Student] is deemed eligible for receiving vocational support services through DVR following his assessment, this will allow for approximately 1 month of transition services to occur from the completion of his assessment . . . from his current team, to the vocational team.

. . .

We can say with confidence, as echoed by [Student's] DVR case supervisor who recently expressed concern he may be deemed ineligible for DVR services due to the current level

of behavioral support [Student] needs to be safe and successful in the community, if [Student] is transitioned out of this level of support without time for extended, careful therapeutic fading, his access to employment and successful community engagement will be highly limited in his future.

38. On April 3, 2023, Parent submitted her reply to the District's response. That reply stated in part:

[Student] can absolutely continue to access DVR services after he exits [the District] but without the vocational skills development and training, he is bound to fail at employment and may soon find himself ineligible for DVR services . . . According to DSHS, it is DVR's role to help people with disabilities to seek and secure employment. It is not DVR's role to help students identify career interests, develop skills and provide training; it is the District's role to fulfill and it is one specific IEP goal that the District has not met.

. . .
The District had not properly implemented [Student's] IEP, including his [transition plan], in violation of the IDEA. Since March 2022, the District YEPP/Transition Coordinator has not been involved in meeting his vocational goals at all. The [transition plan], especially the Job Foundation component of it, cannot be faithfully implemented without the involvement and guidance of the Transition Coordinator. Also, as a consequence of [Student's] shortened school schedule, he has lost 542.80 instructional hours and learning opportunities. A year of Compensatory Services will allow the [transition plan] to be fully implemented and to make up for the lost hours.

CONCLUSIONS

Issue One: IEP Implementation – The Parent's complaint alleged the "job skills training and employment exploration goals in [Student's] IEP are not addressed/implemented according to the timeline set forth." In the Parent's reply she stated:

Since March 2022, the District YEPP/Transition Coordinator has not been involved in meeting his vocational goals at all. The [transition plan], especially the Job Foundation component of it, cannot be faithfully implemented without the involvement and guidance of the Transition Coordinator. Also, as a consequence of [Student's] shortened school schedule, he has lost 542.80 instructional hours and learning opportunities. A year of Compensatory Services will allow the [transition plan] to be fully implemented and to make up for the lost hours.^[1]

The Parent's concerns are further illustrated by a March 2023 report by the behavior consulting company the District contracted with to work with the Student, which stated in part:

We can say with confidence, as echoed by [Student's] DVR case supervisor who recently expressed concern he may be deemed ineligible for DVR services due to the current level of behavioral support [Student] needs to be safe and successful in the community, if [Student] is transitioned out of this level of support without time for extended, careful

¹ OSPI notes that, regarding the shortened school day, the documentation indicates that the decision to shorten the Student's school day was an IEP team decision and something initially proposed by the Parent in fall of 2021. If the Parent has concerns about the length of the Student's school day at this point, OSPI encourages the Parent to request an IEP meeting to discuss the amount of services and school day.

therapeutic fading, his access to employment and successful community engagement will be highly limited in his future.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA.

The complaint investigation timeline began on February 28, 2022. On this date, the Student's November 2021 IEP was in effect and included a transition plan, with post-secondary goals and transition services and activities. The transition services for Student's employment goal in the November 2021 IEP provided:

[Student] will practice classroom and/or in building jobs that entail working in the cafeteria after lunch. [Student] will be practicing closing the lunch tables and pushing lunch tables to the side of the cafeteria. This year in the Transition Program, he will have school-based jobs and work with YEPP (youth employment preparation program).

In the Student's September 23, 2022, IEP the transition services for Student's employment goal provided: "Community employment/volunteer opportunities will be developed by [District] internship and transition coordinator, DVR/DDA, and supported by [the behavior consulting company] ABA services."

The transition services regarding Student's employment goals for the two IEPs in effect during the present case required the Student to go into the larger school and community. In this case, facts from both the spring of 2022 and the 2022-2023 school year have demonstrated that despite the District's significant attempts, the Student was having a difficult time with changes in routine and experiences that were occurring outside his classroom. During the spring of 2022, the Student was on a shortened school schedule—per the IEP team's decision and agreement—because of the concerns about his behavior. On more than one occasion during the spring 2022 the Student became escalated and could not calm down. As of June 2022, the District reported that the Student was still at the emerging skill level for his vocational/transition goals, although in the later September 2022 IEP the transition plan noted the Student "demonstrates adequate pre-vocational and vocational skills such as following simple verbal directions given processing time. Directions broken down into smaller tasks with some visual cuing." In response to some of the challenges, the District began the process to contract with a behavior consulting company to work with and support the Student.

From the start of the 2022-2023 school year, the behavior consulting company has been working with the Student for 22.5 hours a week (1,350 minutes) providing specially designed instruction and according to their records "[Student] has attended 100% of days based on the...District calendar and has received 100% of weekly hours/minutes of specially designed instruction time allotted by our contract with...District. No days have ended early due to [Student's] behavior."

The behavior consulting company drafted a report in March 2023, which described several areas where the Student was making progress and having success, and also noted areas that continued to be challenging for the Student. Despite this success, the March 9, 2023, memo drafted by the Student's BCBA and teacher expressed:

Community outings were almost always unsafe due to the serious behaviors of concern exhibited by the student on the bus. Students travel to job sites in district vans and on the bus [Student] used a harness. This was not an option for the vans to the jobsite nor did we have the 3:1 ratio needed to safely support [Student] at that time. We attempted to provide cafeteria cleaning (as a jobsite, as other students in our program do this every year) for [Student] multiple times, this adapted to cleaning his own desk in the classroom, as transitions were the most challenging part of the day for [Student]. [Student's] tendency to elope was much less of an issue in the classroom, where we had more supports in place, such as extra staff and a safe quiet place for [Student] to decompress and take breaks.

In the present matter, the record shows that the District was in close contact with outside entities such as the behavior consulting company and DSHS's DVR to try to ensure that the Student would progress in a manner that would increase the likelihood that he could achieve his very important employment goal. Despite the District's significant efforts, the Student has not progressed in manner that will guarantee his success in communities outside of his classroom; however, the District did work to ensure the Student had access to these experiences and could work on his goal, but at the school/in the school setting. Based on the available facts, the District has not materially failed in providing the Student his IEP services concerning his employment goals. Thus, OSPI does not find a violation regarding the present case's issue.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None.

Dated this 17th day of April, 2023

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.)