

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-63

PROCEDURAL HISTORY

On May 20, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Kent 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 May 23, 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 May 26, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on May 31, 2022.

On June 9, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on June 10, 2022. OSPI invited the Parent to reply.

On June 15 and 16, 2022, OSPI received the Parent's initial reply. OSPI forwarded that initial reply to the District on June 21, 2022.

On June 21, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District the same day.

On June 23, 2022, OSPI received additional information from the District. OSPI forwarded that information to the Parent on June 27, 2022.

On June 29 and 30, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on July 5, 2022.

On July 6 and 8, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on July 8, 2022.

On July 11, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on July 14, 2022.

On July 11, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on July 14, 2022. OSPI forwarded that information to the District on July 15, 2022.

On July 19, 21, 22, and 25, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on July 25, 2022.

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

ISSUES

1. Did the District follow procedures to monitor and report the Student's individualized education program (IEP) progress during the 2021-2022 school year?
2. Did the District properly amend the Student's IEP in February 2022 to removing adaptive and social emotional services, including whether this decision was made based on sufficient, Student-specific data?

LEGAL STANDARDS

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

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

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

FINDINGS OF FACT

Background Information¹

1. The Student was found eligible for special education services in April 2021 and attended the District's early childhood education program from May 2019 through June 2021.
2. The Student's IEP team developed the Student's initial IEP in May 2021. The May 2021 IEP included, in part, the following annual goals:

¹ This information is included for contextual purposes only.

Social/Emotional 1: By 05/11/2022, when given a situation that elicits stress or frustration and a visual choice board Student will choose a regulatory skill (such as, but not limited to: deep breath, belly breathe take a break) improving Social Emotional skills from 2/5 opportunities to 4/5 opportunities across three data sessions as measured by teacher collected data.

Social/Emotional 2: By 05/11/2022, when given a peer invitation to play Student will respond to a peers invitation to play (i.e. by giving eye contact, verbally using her words and stating yes or no, or no thank you) without adult support improving her social emotional skills from 0/5 opportunities to 4/5 opportunities on 3 consecutive data sessions as measured by teacher collected data.

Social/Emotional 3: By 05/11/2022, when given the opportunity, and a question about what emotion she is feeling Student will identify the emotion she is feeling improving social emotional skills from identifying her emotions 1/5 opportunities to identifying her emotions 5/5 opportunities across 3 data sessions as measured by teacher collected data.

Adaptive 1: By 05/11/2022, when given a direction with visual and verbal prompts Student will follow classroom expectations, safety commands, routines and directives improving her ability to respond to classroom expectations, safety commands, routines and directives from 3/5 to 4/5 as measured by teacher collected data.

Adaptive 2: By 05/11/2022, when given a structured small or large group activity Student will engage in the task (stay in the area, do the work) on a non-preferred activity improving Adaptive skills from 6 minutes on task to 10 minutes on task, across three data sessions as measured by teacher collected data.

The May 2021 IEP also included three communication goals: **communication 1** (expressive self-advocacy); **communication 2** (using prepositions); and **communication 3** (fricatives in phrases). Under the May 2021 IEP, progress on the goals was to be reported once a semester via a copy of the goal page.

In terms of communication, the May 2021 IEP provided the Student between 120 minutes and 240 minutes of specially designed instruction each month. (The service matrix on the May 2021 IEP included two entries of: 30 minutes 4 times a month, to be provided in the special education setting. One of these entries stated the services were to be provided concurrently, the other stated the services were not to be provided concurrently, and none of the other service areas, according to the IEP, were to be provided concurrently.)

2021–2022 School Year

3. The District's first day of school for kindergarten students was August 31, 2021.
4. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of developmental delay, was in kindergarten, and attended a District elementary school. At that time, the Student's May 2021 IEP was in effect.

5. The Parent's complaint request included goal progress tracking sheets (tracking sheets) created by District staff. It appeared:
- The special education teacher, at least irregularly, noted the Student's progress on **adaptive 1** and **2** from approximately September 2021 through early October 2021.
 - For **adaptive 1**, every entry was "yes" – meaning, Student followed appropriate directives.
 - For **adaptive 2** – length of time on task, the time varied, ranging from 10 to 30 minutes.
 - A paraeducator, at least irregularly, noted the Student's progress on **adaptive 1** and **2** from approximately November 2021 through February 2022.
 - For **adaptive 1**, every entry was "yes" – meaning, Student followed appropriate directives.
 - For **adaptive 2** – length of time on task, the time varied, ranging from 10 to 30 minutes.
 - The special education teacher, at least irregularly, noted the Student's progress on **social emotional 1** and **2** from September 2021 through October 2021.
 - For **social emotional 1**, each entry is "yes" – meaning, Student chose an emotional regulation strategy.
 - For **social emotional 2**, each entry is "yes" – meaning, Student appropriately initiated play with others.
 - Upon knowledge and belief, a paraeducator², at least irregularly, noted the Student's progress on **social emotional 1–3** from approximately September 2021 through April 2022.
 - For **social emotional 1**, each entry is "yes" – meaning, Student chose an emotional regulation strategy.
 - For **social emotional 2**, every entry but one is "yes" – meaning, Student appropriately initiated play with others.
 - For **social emotional 3**, every entry is "yes" – meaning, Student was able to identify the emotional Student was feeling.³
6. On September 9, 2021, the Parent emailed the general education teacher and the special education teacher, noting the Student had recently demonstrated "hitting" at home.

The general education teacher responded, in part:

We have talked about appropriate behaviors when playing with others, how to share and use kind words to ask for toys or communicate with your friend. So far, she has played well with others and has not had any issues.

You may have tried these things, but here's some things we would do at school: go over expectations before play, post visuals of what play should look like, read stories about play, model what play should and should not look like, talk about expected/unexpected behaviors during play, talk through some different scenarios and discuss some appropriate ways to respond to the situation (Ex: What should we do if our friend takes the toy we want to play with?)

² From the documentation in the Parent's complaint request, it is not entirely clear who created this particular tracking sheet; the sheet does not have a name or title on it, but based on its placement among the other tracking sheets, it appears this particular tracking document was created by the paraeducator.

³ In the documentation she submitted to OSPI during this investigation, the Parent took issue with the content of the tracking sheets, both in terms of their accuracy, as well as their thoroughness.

The special education teacher responded, in part:

My input is that I have never seen Student act aggressively during play time or any other time. I understand what you are saying about aggressive behaviors seen more at home than at school. I'm hoping that the social emotional regulation exercises will help her deal with her feelings more effectively at home too.

7. On September 22, 2021, the Parent emailed the occupation therapist (OT), noting the Student had been demonstrating some challenging behaviors in the home environment ("hitting, throwing, biting, screaming, [and] breaking things").

On September 23, 2021, the OT responded, stating, in part:

We are not seeing the same self-regulation difficulty at school, she is doing great so far, but we appreciate you bringing your concerns to us! So far, she is engaging with peers and adults verbally, is completing all her work independently, and is regulated throughout the day.

...

I am happy to support you and Student and am sorry to hear that she is having some difficulties with self-regulation when she gets home or is with family. Often this is a pattern I see with many students, especially this year with having longer days and being back in school for the first time in a while (although I know she was back for the spring in that brief time). Family is a safe space where students who have been building those emotions can release them.

For now, I can work with the special education teacher to create a break visual and menu with her for Student to use while at school. Hopefully offering some opportunities for breaks might allow her to have time to self-regulate before she gets home. I am also happy to provide you with a list of self-regulation tools to trial at home if that is something you are interested in.

8. In October 2021, District staff and the Parent collaborated on a "calm down choices" visual chart, which included self-regulation strategies for the Student to choose. It appears said chart was to be used in both the home and school environments.
9. On October 27, 2021, the Parent emailed District staff, informing them the Student "was off this morning when we arrived [at school]." Upon knowledge and belief, in her email, the Parent hypothesized the Student's behavior resulted from the presence of an unknown male in or around the classroom ("I asked if it was because [another student's] dad was here [and Student said, 'yes'].")
10. On November 14, 2021, the Parent emailed several District staff members, stating, in part:

We have been advised by Student's private behavioral health provider to start a daily report card. This will take place at home and school.

My instructions are: work with your school staff to identify a few behaviors (no more than 4 at a time) that Student will work towards throughout the day. These behaviors should include some behaviors that are easy to achieve and some that take a little more work to achieve (but are not impossible).

Throughout the day, teachers will monitor Student's behavior to watch for her positive behaviors. The day should be split into four or five time chunks so that Student has lots of opportunities to succeed. Each time Student gets through a period of time with the positive behavior, the teacher should come by and put a check mark or a sticker on the report card with a verbal praise. ('You did a great job staying in your seat this morning!') If Student does not succeed, the teacher should provide a neutral comment paired with a comment positively 'forecasting' his success during the next chunk of time. ('It was hard to control your body this morning. I can't wait for you to show me a calm body this afternoon!')

According to the Parent, subsequent to this email, "the special education teacher declined help from OT to help implement the card; the special education teacher did not help to implement or take on the responsibility of creating or maintaining the card; and the special education teacher failed to fill out the card correctly, completely, or at all on many occasions."

11. In a December 1, 2021 email to the school psychologist, the special education teacher noted the Student was making progress on her IEP goals and that the special education teacher did not "think Student is going to qualify in social emotional anymore except she is exhibiting problems at home."

12. According to the District:

[There was] a December 1, 2021 IEP meeting at which Student's service minutes and daily schedule were discussed. At the meeting, Parent reported that Student was having difficulties at home and transitioning to home from school. It was agreed that school staff would encourage Student to take breaks at school, provide her access to fidgets and would provide Parent with advance notice of events at school that might change Student's normal daily routine.

A December 1, 2021 prior written notice read, in part:

The reason we are proposing or refusing to take action is: Student is exhibiting behaviors at home including struggling to get ready for school, difficulty with emotion regulation, aggression with her siblings, etc. Parents believe this is because she is not receiving consistent support every day. The Integrated Program paraeducator has not been consistently in attendance at school since the beginning of the school year. Consequently, there have been a variety of education staff that have been working with Student since the beginning of the school year. In addition, Student's parents have noted her feelings of anxiety around strangers, especially new men. Even her male preschool teacher was a stressor for Student. Also, fire drills, earthquake drills, etc are stressors for Student when she gets home.

Description of any other options considered and rejected: At the meeting it was discussed that the school is going to notify [Parents] when there are fire drills, earthquake drills, etc to prepare Student for changes in her day. In addition, when Student is in school, she is able to use her fidgets and sensory tools when she is feeling anxious. One concern is that she is not asking for breaks.

School staff are going to teach Student to take breaks 3 times per day, in hopes that this will reduce her emotional breakdowns when she gets home. Student will also be offered headphones (possibly noise cancelling if she likes them) to wear when students are working

and it is getting busy and noisy in the classroom. Student's parents were asked whether they would prefer that Student gets no interventions on the days that there are different paraeducator substitutes. They are still considering this option at this time.

13. The Parent's complaint request included notes that, upon knowledge and belief, relate to the December 2021 meeting (or meetings) and which were created by the Parent. Said notes read, in part:

When we approach school Student either stays close/hides or goes to her car and does not move. Not even when a classmate shows up with goodie bags and I tell her she should go see.

[Other Item]: Morning Check-in Student is still consistently stating she is 'happy' when asked.

[We] discussed other possible reasons why she replies 'Happy'. Wanting to get through the process and be done with the questions, it's a learned expectation to be happy, it's repetitive.

...

Discussed [Student's use of] breaks: general education teacher reported that Student most often declines an offered and/or scheduled break while in general education...Maybe Student isn't wanting to stand out to her classmates as being different. Maybe Student thinks it's a negative thing. She also declines at home, but if offered it is when she is showing she is dysregulated.

14. A December 14, 2021 email from the speech language pathologist (SLP) referenced the use of a "visual schedule" for the Student, as well as a "picture cards" chart. Upon knowledge and belief, the "picture cards" chart was a tool used to improve communication between and amongst the Student and District staff, as well as to aid transitions between school activities—entries, included, in part—guest teacher, snack, special education teacher, library, etc.

15. The District's first semester ended on January 25, 2022.

16. In the spring of 2022, the Parent exchanged at least three emails with District staff, wherein she articulated changes that she wanted made in relation to the daily behavior progress report card she requested on November 14, 2021.

17. According to various emails, two in-school scenarios in which the Parent believed the Student demonstrated anxiety were: being in the presence of unknown male staff; and immediately before the morning school bell.

18. According to the District:

On February 7, 2022, Parent attended a parent-teacher conference for Student, which was attended by Student's general and special education teachers. At that meeting, Parent and Student's teachers discussed her schedule, a check-in system, the use of breaks and fidgets in the classroom. The parent-teacher conference was continued to March 2, 2022 to address additional parent questions. These was not IEP meetings, thus there were no prior

written notices documenting the meetings. No changes were made to Student's IEP services at the February/March parent-teacher conferences.

19. An email from the SLP referenced the Parent having been provided an update on the Student's progress on the Student's communication goals sometime in February 2022.
20. On February 7, 2022, the principal emailed the Parent a copy of "iReady reports⁴ and [an] IEP progress report (speech included)."
21. No later than February 9, 2022, the Parent informed District staff of the results of a private psychiatric assessment of the Student procured on or about December 30, 2021. Summarizing the private psychiatrist's determinations, the Parent wrote, in part:
22. On April 1, 2022, the general education teacher emailed the school psychologist, providing information that was incorporated into the Student's reevaluation (below).
23. On April 19, 2022, the District's evaluation group completed a reevaluation of the Student. The April 2022 reevaluation report read, in part:

Review of Existing Data

...

Student was initially referred to [to an early intervention program] in July 2017. At that time, she presented with delayed gross motor skills. Speech-language therapy and occupational therapy were added in March 2018 to address expressive language, sensory processing, emotional regulation and social skills concerns.

Student was transitioning from a birth to two program...in 2019 and was referred to [District] in February 2019 to determine if she would be eligible for special education services when she turns three.

...

The team determined during Student's initial evaluation meeting that she qualified for special education services under the category of Developmental Delay with specially designed instruction in Social/Emotional, Adaptive, Speech Language-articulation and Speech Language-language with Occupational Therapy as a Supplementary Aid and Service.

...

A prior written notice was sent home to the family on 12/01/2021. The document notes that Student's parents proposed an IEP meeting to go over Student's service minutes and daily schedule. This was requested because 'Student is exhibiting behaviors at home including struggling to get ready for school, difficulty with emotion regulation, aggression

⁴ These appeared to relate to the Student's performance and skills sets in the areas of reading and math.

with her siblings, etc. Parents believe this is because she is not receiving consistent support every day.'

At the meeting it was discussed that the school will notify the family when there are fire drills, earthquake drills, etc. to prepare Student for changes in her day. In addition, when Student is in school, she is able to use her fidgets and sensory tools when she is feeling anxious. School staff will teach Student to take breaks, in hopes that this will reduce her emotional breakdowns when she gets home. Student will also be offered headphones to wear when it is busy and noisy in the classroom.

...

General Education

...

PARENT FEEDBACK

Student's mother reported that Student has started showing empathy at home, but only to her baby sister. Overall, Student is well behaved when regulated and does great while at school. She responds well to praise. She is opening up to a variety of toys, movies, games, and activities slowly. She has a great sense of humor that is silly and surprising. Student's mother is concerned about Student's eating habits and her willingness to try a variety of foods.

Some of Student's reported challenges at home include: Difficulty transitioning, inability to express a feeling other than happy, social anxiety to familiar and unfamiliar people, inability to answer simple questions with anything other than 'I don't know' or 'I don't remember,' responds with a headache after given a demand, sleepwalking, refusal to perform mastered skills, and inflexibility to change, and an anxious temperament.

Student's mother also reported that Student will have 'ODD explosions' and that the stress at school to please teachers and interact with peers is being released once home in a violent tantrum.

TEACHER FEEDBACK

Student follows all classroom rules, expectations, and procedures. She is very kind and is liked by her peers. Student asks for help when it is needed and lets me know if she doesn't like a topic/activity we are learning about (spiders, insects, unusual things). She is a great role model for her peers. No behavioral concerns. Prefers using the bathroom inside my class and won't use the primary bathroom inside of the school. Will sometimes have me check the bathroom for her before use.

She always plays with friends at recess. Tag and a lot of running around or on the big toy. She plays and interacts with friends during class and I have never seen her dysregulated at school. I don't think anxiety impacts her learning. She is shy around new people, but it has never affected her ability to do schoolwork. If we're watching science stuff that she doesn't like, she will tell me 'I don't like this' and I let her go sit at her desk with play dough or a fidget, but she has never had to 'recover'.

...

Overall, Student is reported to be a student with a significant difference in her emotional regulation and behaviors in the school and home environments. At school, Student is able to ask for help, regulate her emotions, and is a great role model for her peers. At home, Student is reported to have significant challenges with behavioral and emotional regulation

as well as answering questions appropriately, transitioning, managing anxiety, and responding appropriately to demands.

Social-Emotional

...the Behavior Assessment System for Children, 3rd edition (BASC-3) was completed by Student's general education teacher and Student's mother. The BASC-3 rating form is used to provide a measure of Student's behavior and social skills from each individual's point of reference... It is important to note that differences in individual ratings are typical and indicates that either Student's behavior or the individual's perception of that behavior differs across environments.

A student interview was also completed with Student to gather information from her perspective about her social/emotional/behavioral skills, as well as her likes and dislikes. A summary of that interview is provided below.

VALIDITY INDEX SUMMARY

The F Index is designed to assess the possibility that the rater has a tendency to describe the child's behaviors in an excessively negative manner. If the rater endorses a high number of items describing maladaptive behaviors as occurring "almost always" and adaptive behaviors occurring "never", the F Index will be elevated. In the results for Student's mother, the F Index was in the "Extreme Caution" range, indicating a negative view of Student's behavior. These ratings can reflect frustration with the student's behavior. Additionally, this frustration is often coupled with strong concerns about the student's skills in this area, and they are attempting to communicate the perceived necessity for supports.

When following up with Student's mother about the items that contributed to this elevated score, she provided clarifying information about why the following items may have been rated as 'never' or 'almost always.'

1. Will seek help when she needs it. (Never) - Student's mother reported that Student will ask for help if she receives a prompt from mom. If she doesn't receive the prompt, she will often throw a tantrum instead of asking for help.
2. Disrupts the play of other children. (Almost always) - In the home environment, this looks like Student getting up and trying to get mom's attention when mom is helping or interacting with her older sister.
3. Is shy with other children. (Almost always); Avoids other children. (Almost always) - Student's mother reported that Student will not interact with other children and often does not respond when asked a direct question.
4. Is mean. (Almost always); Reacts negatively. (Almost always) - These are related to mom's reports of Student's emotional and behavioral regulation needs in the home environment. Per parent report, Student will tantrum approximately 30% of the time if her initial behaviors (throwing items, pretending she can't take off her shoes, etc.) are ignored.

Due to this elevated index, Student's mother's reports will be interpreted with caution. That said, the elevated nature of the scores overall does indicate challenging behaviors and/or delayed skills in the home environment.

STUDENT INTERVIEW

Student was informally interviewed on 03/24/2022...For the interview, Student was asked questions about what her family does for fun, if she has friends/what she does with her

friends, things that make her happy and sad, things that she likes and doesn't like, what she would wish for if she had three wishes, and what she would change if she could change anything about her life...Student would often say 'I don't know' about what makes her upset or mad or say 'no' when asked if she ever gets upset or mad, even with more direct follow-up questions. However, Student was able to name what makes her happy, which can be typical for children of Student's age. Student's challenges with expressive communication may have also impacted her ability to express her thoughts completely when answering the examiner's questions.

EXTERNALIZING BEHAVIORS

This composite is characterized by emotions/behaviors that result in disruptive behaviors, such as aggression, hyperactivity, and conduct problems. Externalizing Problems was rated in the Average range in the school setting by Student's teacher. The subtests related to Hyperactivity and Aggression were also rated in the Average range, indicating uniform and typical development in this area in the school setting.

...

Externalizing Problems was rated in the Clinically Significant range in the home setting. Student's mother rated both Hyperactivity and Aggression in the Clinically Significant range. These scores indicate that Student has significantly more externalizing behaviors in the home setting than in the school setting. It is important to note that items in this area contributed to the elevated F Index, indicating that Student's scores in this area may be an overestimation of the frequency of her behaviors in this area. The scores will be interpreted with caution.

...

INTERNALIZING BEHAVIORS

This composite is characterized by behaviors related to social withdrawal and/or feelings of nervousness and sadness. Student's teacher rated Internalizing Problems in the Average range with all three subtests (Anxiety, Depression, Somatization) in the Average range as well.

...

Student's mother rated Internalizing Problems in the Clinically Significant range with Depression and Somatization in the Clinically Significant range and Anxiety in the Average range. Results indicate that Student displays significantly more internalizing behaviors in the home setting than in the school setting.

...

BEHAVIORAL SYMPTOMS INDEX

The Behavioral Symptoms Index (BSI) includes a range of behaviors including: Hyperactivity, Aggression, Depression, Atypicality (odd or unexpected behavior), Withdrawal, and Attention Problems...The BSI was rated in the Average range by Student's teacher with Attention Problems and Atypicality in the Average range and Withdrawal in the At-Risk range. Related items that Student's teacher endorsed as true include:

- Atypicality (T= 44, Average)
- Withdrawal (T= 64, At-Risk): avoids making friends (sometimes), refuses to talk (sometimes), quickly joins group activities (sometimes)
- Attention Problems (T= 38, Average)
- BSI (T= 43, Average)

The BSI was rated in the Clinically Significant range by Student's mother with Attention Problems and Atypicality in the At-Risk range and Withdrawal in the Clinically Significant range. It is important to note that items in this area contributed to the elevated F Index, indicating that Student's scores in this area may be an overestimation of the frequency of her behaviors in this area. The scores will be interpreted with caution.

...

ADAPTIVE SKILLS

Adaptive behavior includes the age-appropriate behaviors necessary for an individual to function independently, safely and appropriately in daily life. Adaptive behaviors include real life skills such as safety, following school rules, cleaning, making friends, social skills, and personal responsibility. Student's teacher rated Adaptive Skills, and all three subscales on her form (Adaptability, Social Skills, Functional Communication) in the Average range, indicating that Student displays a typical level of social adaptive skills in the school setting.

...

Student's mother rated Adaptive Skills in the Clinically Significant range. Activities of Daily Living was rated in the Average range and the other three subscales (Adaptability, Social Skills, Functional Communication) were rated in the Clinically Significant range. Results indicate that Student's adaptive skills are significantly more prevalent in the school environment.

...

REVIEW OF IEP PROGRESS

Student's most recent social-emotional IEP goals are as follows:

Goal #1 [Regulatory skills]...This goal was updated upon return to in-person learning to: Student will take a break or use other functional communication strategies when she is feeling anxious or otherwise overwhelmed from 1 out of 5 opportunities to 4 out of 5 opportunities.

As of February 2022, Student is currently at 100% accuracy and has met this goal according to progress monitoring data.

Goal #2 [Peer invitation to play]...This goal was updated upon return to in-person learning to: Student will invite others to play or engage in an activity from 1 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher data.

As of February 2022, Student is currently at 100% accuracy and has met this goal according to progress monitoring data. Progress monitoring notes that 'Student appears to enjoy playing with peers at recess and in class.'

Goal #3 [Identifying emotions]...As of February 2022, Student is currently at 100% accuracy and has met this goal according to progress monitoring data.

CONCLUSIONS

Overall, Student is reported by her teacher and her parent to demonstrate strengths and challenges in this area. Some of Student's strengths in the school environment include that she adjusts well to changes in routine, is easily calmed when angry, politely asks for help, responds appropriately when asked a question, and pays attention...Due to the elevated F index, Student's mother's reports will be interpreted with caution. That said, the elevated nature of the scores overall does indicate challenging behaviors and/or delayed skills in the home environment.

...

A difference in behaviors across home and school environments can be common. Students can hold in big emotions and aggression in the school environment and then release those emotions at home where there is less stimulation. Student's mother reported that Student has challenges with interrupting others when they are speaking and being in constant motion (Hyperactivity) as well as being overly aggressive and arguing when denied her own way (Aggression). Student is reported to have no concerns in this area in the school setting.

...

Withdrawal was the only area that was in an elevated range on the teacher form, where the subtest was rated in the At-Risk range. Student is reported to sometimes avoid making friends, sometimes refuse to talk, and sometimes quickly join group activities in the school environment. Student's mother rated this area in the Clinically Significant range and reported that Student will often isolate herself from others, avoid other children, have trouble making new friends, and cling to her parents in strange surroundings. For students with Withdrawal as an At-Risk behavior in the school environment, it is important that there are opportunities in the general education setting to practice and observe social interactions. For students like Student, who have expressive communication delays, having increased opportunities in the general education setting, while also receiving specific supports to build expressive communication skills, can help build Student's confidence to initiate and participate more actively with her peers. Additional prompts to engage in the social aspects of class when withdrawing may also help support Student.

...

Adaptive

In addition to parent and teacher feedback and observation, Student's adaptive skills were evaluated via parent/guardian and teacher rating on the Vineland-3 Domain-Level Adaptive Behavior Scales (Vineland-3). The Vineland-3 form is used to provide a measure of Student's daily living skills, communication, and social skills from each individual's point of reference. The Vineland-3 was completed by Student's teacher and Student's mother to assess Student's current level of adaptive skills.

...

Student's skills were rated in the Adequate range in the Socialization domain in the school setting and in the Low range in the home setting. Results indicate that Student demonstrates significantly higher levels of socialization skills in the school environment compared to the home environment. Student is reported to be able to cooperate with peers, show concern for others, and compromise with others in the school environment. She is reported to not yet be demonstrating these skills in the home environment.

...

Student's skills were rated in the Moderately High range in the Daily Living Skills domain in the school environment and in the Adequate range in the home environment. Results indicate that Student's daily living skills are a strength for her in her adaptive skills across environments. Student is reported to maintain attention and ask for help independently in the school environment as well as understand safety rules and complete some chores (putting away clothes) in the home environment.

...

Overall, Student's teacher rated Student's adaptive communication skills in the Moderately High range while Student's mother rated Student's adaptive communication skills in the Low range. Results indicate that Student demonstrates a higher frequency of adaptive communication skills in the school setting than in the home setting. Student is able to

answer questions and use her own opinions to comment in the school environment but is not yet demonstrating these skills in the home environment.

...

Overall, Student's teacher rated Externalizing in the Average range and Internalizing in the Elevated range. Student's mother rated both Externalizing and Internalizing in the Clinically Significant range. Student is reported to have some challenges with anxiety and fearfulness in the school setting but at lower rates than is reported in the home environment.

REVIEW OF IEP PROGRESS

Student's most recent adaptive IEP goals are as follows:

Goal #1 [Follow classroom expectations, safety commands, routines and directives]...As of February 2022, Student is currently at 100% accuracy and has met this goal according to progress monitoring data.

Goal #2 [Task engagement non-preferred activity]...As of February 2022, Student is currently at 100% accuracy and has met this goal according to progress monitoring data. Progress monitoring notes that Student is at '5 out of 5 opportunities with 10-30 minutes on task.'

Behavior

The Social Skills Improvement System (SSiS) Rating Scales provides a broad, multirater assessment of student social behaviors that can affect teacher-student relations, peer acceptance, and academic performance. The SSiS uses teacher and parent rating scales to sample the three domains of Social Skills, Problem Behaviors, and Academic Competence...The SSiS was completed by Student's teacher, and Student's mother in order to gain their perspectives on Student's social skills and potential competing problem behaviors across environments.

...

Overall, Student's teacher's rating of the Social Skills Scale fell in the Average range, indicating that Student's social skills are typical for her age at school. This is different than Student's mother's rating, which placed the Social Skills Scale in the Below Average range. Within the Social Skills Scale are seven subscales. On the teacher rating, three of the subscales (Communication, Empathy, Engagement) are within the Average range, indicating that Student's skills related to speaking in the appropriate tone of voice, understanding how others feel, and engaging with peers in classroom activities are typical for her age.

Cooperation, Responsibility, and Self-Control were rated in the Above Average range, indicating that Student is showing a higher frequency of skills in this area that is typical for her age. This includes skills such as helping others and complying with rules and directions (Cooperation), taking care of materials and communicating with adults (Responsibility), as well as responding appropriately in conflict (e.g. disagreeing, teasing) and nonconflict situations (taking turns, compromising) in the school environment. The area of Assertion was rated in the Below Average range. Student's teacher reports that Student will not independently question rules that may be unfair or stand up for others who are treated unfairly. Student's teacher indicates several social skills strengths for Student including following directions, showing kindness to others when they are upset, making a compromise during a conflict, staying calm when disagreeing with others, interacting well with other children, and participating appropriately in class.

On the family rating form, Cooperation was also rated in the Average range. The other six subscales (Communication, Assertion, Responsibility, Empathy, Engagement, Self-Control) were all rated in the Below Average range, indicating that Student displays less social skills in the home environment. Student's mother reports that Student has challenges with responding well to others in conversation and using gestures/her body appropriately with others (Communication), expressing feelings and saying when there is a problem (Assertion), taking responsibility for her actions (Responsibility), trying to understand how others feel (Empathy), joining in conversations/activities with others (Engagement), and regulating her emotional responses (Self-Control). Student's mother also indicates several social strengths for Student including working well with family members, questioning rules that may be unfair, speaking in the appropriate tone of voice, being well behaved when unsupervised, and following rules when playing games with others.

...

Overall, the Problem Behaviors Scale fell in the Average range on the teacher rating form. ...For the teacher rating, Student's behavior was rated in the Average range for Externalizing, Bullying, and Internalizing. Hyperactivity/Inattention was rated in the Below Average range, indicating that Student displays less impulsive behaviors and more concentration than is typical for her age. Student's teacher reported that Student never acts without thinking, has difficulty waiting for a turn, or breaks into/stops group activities.

For the family rating, Student was rated in the Above Average range on all four subscales. This indicates that Student displays a higher frequency of competing problem behaviors than is typical for her age in the home environment. Student's mother reports that Student almost always has difficulty waiting for turn, becomes upset when routines change, withdraws from others, has temper tantrums, breaks into/stops group activities, acts anxious with others, has sleeping problems, lies/does not tell the truth, gets embarrassed easily, and fights with others.

PARENT INTERVIEW

A parent interview was conducted to gather further information on Student's behavioral needs in the home environment. Student's mother reported that she feels that when Student is at school it is causing her stress and she explodes at home. Student's tantrums have been '80% eliminated over last couple months.' Student tantrums almost always happen when coming home from school and they start when Student first sees mom. Student walks home from school with her sister and will be calm until seeing mom. This happens whether it is mom walking up to meet Student and her sister when they get home or when Student walks through the door and sees mom. When mom is walking up to meet them, Student's tantrums will start by ignoring mom's presence, and then going into the house and throwing things out of her backpack. If mom meets them at the door, Student will drop to the floor and pretend that she cannot take her shoes off on her own...

Student's tantrums typically happen within the 1st 20 minutes when coming home from school. Per parent report, Student did not have any tantrums when not at school for five weeks around winter break. Her behavior worsened when she returned to school and when she was away from mom. There has been previous discussion of separation anxiety with a psychologist.

The family has tried several calm down strategies with Student at home including chewies, squishees, belly breathing, a break, and a hug. Student sometimes engages with these when she is regulated but does not engage with them when she is dysregulated...

Mom reports that the family also uses a visual schedule at home when coming home from school. It includes taking off shoes, changing clothes, washing hands, and bringing her lunch to the kitchen. There are also additional visual schedules used for snack and other activities in the home. Mom reports that praise helps Student the most and mom has created a positive behavior report card to use at home and at school and typically reviews it with Student on Fridays...

Mom reported and sent documentation of a psychiatrist's notes about Student. The psychiatrist notes show a diagnosis of 'Disruptive behavior disorder exacerbated by anxious temperament and expressive language disorder.' A release for the exchange of medical information has been sent to this medical provider to further document this.

...Mom reported that, because of Student's expressive communication difficulties, she often doesn't express a lot so it is hard to tell if and when she is feeling worried.

Conclusions

Overall, Student demonstrates several strengths as well as areas to improve in terms of her use of social skills. It is important to note that there was a significant difference between ratings of Student's behavior in the home and school environments. Student is reported to have typical levels of social skills in the school setting and no identified competing problem behaviors. In the home setting, Student is reported to have a below average level of social skills and several identified competing problems behaviors. Student has several social skills strengths in the school environment including following directions, showing kindness to others when they are upset, making a compromise during a conflict, staying calm when disagreeing with others, interacting well with other children, and participating appropriately in class. Student's strengths in the home environment include: working well with family members, questioning rules that may be unfair, speaking in the appropriate tone of voice, being well behaved when unsupervised, and following rules when playing games with others. In the home environment, Student is reported to have significant social skill acquisition challenges with showing empathy, making friends, regulating her emotional responses, using expressive language appropriately and effectively, and self-advocating. Student is not reported to have any competing problem behaviors in the school environment. In the home environment, Student is reported to have several competing behaviors including: difficulty waiting for turn, becoming upset when routines change, withdrawing from others, having temper tantrums, breaking into/stops group activities, acting anxious with others, having sleeping problems, lying/not telling the truth, getting embarrassed easily, and fighting with others.

These results indicate that Student's behavioral skills are typical for her age in the school environment, indicating that specially designed behavioral instruction may not be necessary to support her at school. Behavioral instruction in the home environment may greatly benefit Student's behavioral regulation skills and behavioral responses in the home environment.

In the home environment, Student may benefit from a reinforcement system to keep her on track and motivated to follow rules and expectations at home. When interacting with Student at home, it may be beneficial to emphasize praise and recognize positive behaviors. To shape behavior, often a 3:1 ratio of positive to negative feedback is recommended. With individuals with defiant or aggressive behaviors, a ratio of 7:1 is recommended. By increasing praise, even for less recognized positive behaviors, such as sitting appropriately or looking at you when you are speaking, Student's more negative behaviors at home may decrease as well. Praise can be provided by naming Student specifically, though it may be helpful to provide indirect praise as well, such as praising a behavior when Student is using it and not Student directly.

It may also be beneficial to provide clear and effective instructions and avoid power struggles. If defiant or aggressive behavior occurs, referring to previously stated instructions or expectations in a calm tone, and following through with the instructions or expectations, can decrease the effectiveness of those negative behaviors. It is important to note that behavior may temporarily worsen in the face of new expectations and responses to Student's behavior. This is common and, by remaining consistent, behavior can begin to improve in the home environment.

If behaviors continue to significantly impact Student's functioning in the home environment, it is recommended that the family continue to follow-up with Student's doctor or behavioral health professionals.

Review of records, teacher/staff input, family input, classroom performance, and results of this evaluation demonstrate that Student does not exhibit significant deficits in behavioral skills at school at this time.

The April 2022 reevaluation report also included information on the Student's communication needs resulting from the Student's disability. For example, in part, the April 2022 reevaluation report noted the results of two assessments that had recently been administered to the Student: the Structured Photographic Articulation Test – Second Edition (SPAT-D II); and the Comprehensive Assessment of Spoken Language – Second Edition (CASL-2). The evaluation report found the Student continued to need specially designed instruction in communication, receptive and expressive language skills and social/pragmatic language skills. The evaluation report indicated the social emotional challenges the Student did exhibit at school were largely connected to communication abilities. The evaluation recommended instruction target self-advocacy skills, identification of emotions, awareness, and functional communication.

24. The District's response read, in part:

The evaluation team then met on April 19, 2022 via videoconference to discuss Student's reevaluation. At that meeting, it was determined that Student no longer qualified for services in the area of social-emotional or adaptive or for the supplementary aid and service of occupational therapy. The evaluation team concluded that Student continued to qualify in the area of communication, both language and articulation, based on her speech delays and somewhat delayed receptive-expressive and social pragmatic language skills. As a result of the April 2022 Reevaluation, Student's disability category was changed to Communication Disorders.

Parent stated her disagreement with the April 2022 Reevaluation and requested the District fund an Independent Educational Evaluation ("IEE") of Student. The District agreed to Parent's IEE request, and that evaluation is currently underway.⁵

Based on the April 2022 Reevaluation, Student's Speech Language Pathologist developed a new IEP for Student with goals in the areas of articulation and language. The IEP team met on May 18, 2022 to discuss Student's new IEP ("May 2022 IEP"). The team agreed Student would receive 60 minutes a week of specially designed instruction in the area of communication, with services to be provided both on a "pull-out" and "push-in" basis. As Student no longer qualified for services in the areas of social-emotional or adaptive, the May 2022 IEP did not contain goals or services in these areas. As indicated above, Student's May 2022 IEP is not final, although the District is implementing this IEP at this time.

25. According to emails, the Parent was provided with a progress report on the Student's IEP goals on April 25, 2022.

Additionally, it appears that, on this same date, the Parent was provided with certain "data sheets" that provided additional detail on the Student's progress, beyond the content of the recent progress report itself.

26. The May 2022 IEP included four communication goals. **Communication 1** related to articulate – "TH production"; **Communication 2** related to narrative retell; and **communication 3** and **4** read, respectively:

By 05/24/2023, when given a familiar visual, Student will identify a body sensation related to an emotion she is experiencing (clenching/squeezing hands, heart beating fast, shaking, stomach growling, etc.), improving awareness of and ability to share what she is feeling, from 0% of opportunities (new skill) to 65% of opportunities as measured by SLP data and observations in each of 3 sessions.

By 05/24/2023, when given an opportunity in which she needs help outside of the general education classroom (during specials, at recess, at lunch, in the hallways, etc.), Student will use words, gestures, and/or visuals to advocate for herself and her learning needs (e.g., ask for help or clarification, request to change environment or another person's behavior, request missing or desired item, etc.), improving self-advocacy and functional communication skills across contexts, from 1 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher report and ongoing SLP data and observations.

Progress on the four communication goals was to be reported once a semester. The May 2022 IEP included some accommodations that were not in the May 2021 IEP, including, at least in part, the following: access to sensory tools (fidget, headphones, etc.); positive reinforcement/praise with specific feedback (e.g., "I love how you asked a friend for help when you weren't sure what to do", "it makes me smile when you say hello to me in the halls", etc.); and visuals to support self-advocacy skills (quiet break, bathroom, help, etc.).

⁵ In its response, the District stated, "The District granted the IEE request, and the Parent made arrangements for completion of the IEE. It is the District's understanding from the Parent that the IEE may be complete, but it has not received a copy of the evaluation."

The May 2022 IEP provided the Student with the 30 minutes twice a week of specially designed instruction in speech concurrent with 30 minutes once a week of speech articulation instruction, provided by an SLP from May 25, 2022 through May 24, 2023.

27. For the 2021–2022 school year, the District’s response included the following progress reporting related to the April 2021 IEP goals: **adaptive 1** – mastered (“February 2022: 5 out of 5 opportunities. GOAL MET!”) (emphasis in original); and, **adaptive 2** – mastered (“5 out of 5 opportunities. GOAL MET!”) (emphasis in original). The progress reporting also documented:

Social emotional 1: Sufficient progress in February 2022, mastered in April 2022.

April 2022: Student is able to take breaks on her own in 5 out of 5 opportunities. This goal has been met. She no longer requires intervention in this area.

Feb 2022: 5 out of 5 opportunities GOAL MET!!

New Goal: Student will take a break or use other functional communication strategies when she is feeling anxious or otherwise overwhelmed from 1 out of 5 opportunities to 4 out of 5 opportunities.

Social emotional 2: Sufficient progress in February 2022, mastered in April 2022.

April 2022: Student invites others to play in 4 out of 5 opportunities. This goal has been met!

Feb 2022: 5 out of 5 invitations. Student appears to enjoy playing with peers at recess and in class.

New Goal: Student will invite others to play or engage in an activity from 1 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher data.

Social emotional 3: February 7, 2022: Sufficient progress.

Feb 2022: 5 out of 5 opportunities GOAL MET!

There is some question from Student's mother about whether Student is accurately reflecting her emotions when she is reporting her feelings. Student reports pretty consistently that she is happy when she is asked. We are continuing to check in with her regularly on this so we will remind Student that the emphasis is not on what she wants others to see about her emotions and that it is ok to report that she is not happy at any given time.

Communication 1 (expressive self-advocacy): January 28, 2022: emerging skill.

January 2022: Within the 1:1 speech-language therapy setting, Student consistently advocates for preferred activities, help, or to use the bathroom. More data will be collected within the classroom setting to address Student's ability to advocate for herself and her learning needs in a larger group setting.

Communication 2 (using prepositions in sentences): January 28, 2022: sufficient progress. Student has made great progress on this goal. She consistently uses a variety of prepositional phrases within the speech-language therapy setting (“We have lights inside and outside our home”, “presents go under the tree”, “there can be a lot of snowflakes around him”, “I don't want to go on the slide because I don't want to go down”).

Communication 3 (fricatives in phrases): January 28, 2022: sufficient progress.

January 2022: Student produces initial /f/ and /v/ in sentences with more than 90% accuracy when given a model. She produces initial voiceless TH in sentences with 80% accuracy and

initial voiced TH in sentences with 80% accuracy. These sounds will continue to be targeted in medial and final position of words.

28. According to the Parent, the data on the Student's needs resulting from the Student's disability did not support removing adaptive and social emotional from the SDI to be provided to the Student. Specifically, the Parent stated the data was "insufficient" and that the reevaluation was "compromised."

The Parent's concerns regarding the removal of adaptive and social emotional SDI related, in part, to her concerns regarding progress reporting procedures. In her complaint request, the Parent noted:

- **Social emotional 1:** Self-Regulation – "Student will choose a regulatory skill (such as, but not limited to: deep breath, belly breathe, take a break) when given a situation that elicits stress or frustration and a visual choice board."
 - "None of [the progress report entries] state which regulatory skill was chosen, the emotion she was feeling, or the situation that elicited stress or frustration."
 - "To my knowledge Student did not have any visuals for support in the classroom until I requested a visual schedule in December 2021 and reminded special education teacher it was in her IEP. There for I do not believe she was given a 'visual choice board' during this data collection date range of 10/15-12/9/2021"
 - "I have been told in every meeting/conversation that Student has never shown stress, anxiety, dysregulation, or negative emotions or behaviors."
- **Social emotional 1** – Self-Regulation, [as revised after spring 2021 IEP]: "Student will take a break or use other functional communication strategies when she is feeling anxious or otherwise overwhelmed."
 - "None of [the progress report entries] state whether it was a break or other communication strategies."
 - "None of [the progress report entries] indicate the situation, environment, feeling felt."
 - "I have been told in every meeting...that Student does not take a break independently and chooses not to take one when offered."
- **Social emotional 2:** "Student will respond to a peer's invitation to play (i.e. by giving eye contact, verbally using her words and stating yes or no, no thank you) without adult support when given a peer invitation to play."
 - "None of [the progress report entries] indicate how Student responded (i.e., eyes, words, played, walked away)."
 - "None of [the progress report entries] indicate whether it was a familiar peer [or] the same peer each time."
 - "1 of [the] 7 [entries] is documented on a holiday/no school day – November 11, 2021."
- **Social emotional 3:** Identify Emotions: "Student will identify the emotion she is feeling when given the opportunity and a question about what emotion she is feeling."
 - "One date is 11/6/21 which is a Saturday. This leave only 4 opportunities when 5 are required for this goal."
 - "Special education teacher believed this goal was met in November 2021" but Parent did not believe that to be true.
- **Adaptive:** "Student will engage in the task on a non-preferred activity when given a structured small or large group activity from 6 min to 10 min."

- "4 data points include the non-preferred activity as Reading or Writing. These are not non-preferred to my knowledge...I was told by special education teacher [that] Student does not have any non-preferred activities."
- "Only one [of the] data points [entered by paraeducators] has a task listed."
- "6 of 48 data collections have no detail other than the date and a 'Y' or 'N' is circled."

29. In its response, the District stated:

It appears that some of the sheets from Student's former special education teacher contain typographical errors regarding dates of service. Although these are simple mistakes and Student no longer receives services from this teacher, the District acknowledges that greater detail could be paid to data collection. As such, although it is the District's position that it complied with the IDEA with respect to this issue, the District will conduct teacher-specific training regarding progress monitoring and data collection practices in the fall of 2022 to ensure high quality data collection.

The District also will conduct reviews of randomly-selected progress data for the teacher's students at three different times during the 2022-2023 school year.

30. The final day of school was June 20, 2022, which was also the end of the second quarter.

31. On June 20, 2022, the District emailed the Parent a progress report for the Student's communication goals in the May 2022 IEP. Each communication goal had the following entry: "June 20, 2022: limited new data to report since initiation of IEP in May 2022. [Student] is still at or close to reported baseline."

32. IEP implementation was outside the scope of this investigation, but OSPI notes that during this investigation, the District extended the Parent an offer of compensatory education for certain services missed during the 2021–2022 school year: 39 hours of speech and language.

CONCLUSIONS

Issue 1: Progress Reporting – The Parent alleged the District did not follow proper progress reporting procedures throughout the 2021–2022 school year.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals.

Here, the May 2021 IEP included 8 goals: **adaptive 1–2**; **social emotional 1–3**; and **communication 1–3**. Progress on these goals was to be reported once a semester via a copy of the goal page. The first semester ended on January 25, 2022, and on February 7, 2022, the principal

emailed the Parent a copy of an "IEP progress report (speech included)."⁶ As shown above, the early February 2022 progress report was sufficient to inform the Parent of the Student's progress on IEP goals. For example, the present levels in the early February 2022 progress report were generally reported using the same units of measurement as was used in the goals themselves. By way of illustration, **social emotional 1** stated the Student would improve the ability to regulate emotions improving "from 2/5 opportunities to 4/5 opportunities across three data sets." And the February 7, 2022 progress report entry for **social emotional 1** read, "sufficient progress: 5 out of 5 opportunities. GOAL MET!!!" (emphasis in original). OSPI finds no violation.

The May 2022 IEP included four communication goals. Progress on the four communication goals was to be reported once a semester. Here, the second semester ended on June 20, 2022. On June 20, 2022, the District emailed the Parent a progress report for the Student's communication goals in the May 2022 IEP. Each communication goal had the following entry: "June 20, 2022: limited new data to report since initiation of IEP in May 2022. [Student] is still at or close to reported baseline."

The May 2022 IEP was to be implemented beginning May 25, 2022, meaning the Student received a few sessions of communication services between the implementation of the IEP and the end of the school year. Progress was reported on June 20, 2022, which incorporated the present levels in the IEP that had been created approximately three weeks earlier. IEP goals are, generally speaking, for an entire year, so in this specific scenario, it would not be a violation of progress reporting procedures if, after only approximately three weeks of instruction, the progress report noted the Student was still near baseline performance on the goals. OSPI finds no violation.

Issue 2: IEP Development – The Parent alleged the District did not follow proper IEP development procedures in removing specially designed instruction in both adaptive and social emotional from the Student's IEP in May 2022.

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. And: an IEP team's decisions must be based on a student's needs resulting from that student's disability.

Here, the Student's May 2021 IEP provided the Student with specially designed instruction in both adaptive and social emotional. Both service areas were removed, however, in the May 2022 IEP.

The Parent stated this was in error as the Student still demonstrated a need resulting from the Student's disability in both of these areas. Based on the documentation provided to OSPI during this investigation, the Parent had the following concerns in relation to the Student, and she believed these concerns demonstrated the Student continued to show a need in both social emotional and adaptive: (1) Student demonstrated anxiety when in the presence of unknown

⁶ It also appears the Parent was provided with a progress report related to the May 2021 IEP, as well as the daily tracking sheets, on April 25, 2022.

males⁷; (2) the Student demonstrated social emotional challenges in the home setting⁸; (3) during the spring 2022 reevaluation process, as part of the “Adaptive Behavior Scales” assessment, the Parent reported the Student’s socialization domain in the low range in the home setting; and (4) the Parent observed the Student would get anxious immediately before school.

In response, OSPI acknowledges in the documentation provided to OSPI during this investigation, there was some evidence to show the Student did have some need, even if potentially minimal, in the area of social emotional and adaptive. For example, the April 2022 reevaluation report noted: (1) the results for the Behavior Assessment System for Children (BASC) noted, in part, “withdrawal was the only area that was in an elevated range on the teacher form, where the subtest was rated in the At-Risk range. Student is reported to sometimes avoid making friends, sometimes refuse to talk, and sometimes quickly join group activities in the school environment”; and (2) the results for the Social Skills Improvement System (SSiS) Rating Scales noted, in part, “The area of Assertion was rated in the Below Average range. Student’s teacher reports that Student will not independently question rules that may be unfair or stand up for others who are treated unfairly.”

The majority of the documentation, though, shows to the extent the Student continued to demonstrate a need in either social emotional or adaptive, this need existed primarily in the home setting; and to the extent such a need did exist in the school setting, it could best be addressed via communication goals that focused on self-advocacy. For example, in part, OSPI notes:

- Both the special education teacher and paraeducator’s respective tracking sheets show the Student was generally able to follow classroom directives throughout the first part of the 2021–2022 school year (**adaptive 1**).
- Both the special education teacher and paraeducator’s respective tracking sheets show the Student was generally able to stay on task for at least 10 minutes throughout the first part of the 2021–2022 school year (**adaptive 2**).
- Both the special education teacher and paraeducator’s respective tracking sheets show the Student was generally able to choose an appropriate emotional regulation strategy throughout the first part of the 2021–2022 school year (**social emotional 1**).
- Both the special education teacher and paraeducator’s respective tracking sheets show the Student was generally able to appropriately initiate play with a classmate throughout the first part of the 2021–2022 school year (**social emotional 2**).
- In a September 9, 2021 email, the general education teacher noted, “So far, Student has played well with others and not had any issues.” That same day, the special education teacher noted: “I have never seen Student act aggressively during play time or any other time.”

⁷ For example, in part: (i) on October 27, 2021, the Parent emailed District staff, stating the Student had recently demonstrated anxiety prior to the beginning of school and that the Parent believed this was because of the presence of an unknown male in or around the classroom (“I asked if it was because [another student’s] dad was here [and Student said, ‘yes’]”); and (ii) a December 1, 2021 prior written notice notes the Parent reported, in part, “even Student’s male preschool teacher was a stressor for Student.”

⁸ Some of these challenges were as follows: (i) “hitting, throwing, biting, screaming, and throwing things”; and, (ii) “Disrupts the play of other children. (Almost always) In the home environment, this looks like Student getting up and trying to get mom’s attention when mom is helping or interacting with her older sister.”

- On September 23, 2021, the OT emailed the Parent, stating, “We are not seeing the...self-regulation difficulty at school [that you are seeing in the home setting].”
- In the April 2022 reevaluation report:
 - The teacher noted, in part: “Student follows all classroom rules, expectations, and procedures. She is very kind and is liked by her peers. Student asks for help when it is needed and lets me know if she doesn't like a topic/activity we are learning about...No behavioral concerns...She always plays with friends at recess.”
 - In the teacher-completed portion of the BASC, no disruptive externalizing behaviors were noted, and Student’s internalizing and/or social withdrawal-type behaviors were noted as within “the average range.”
 - The teacher-completed portion of the Behavior Symptoms Index (BSI) noted the Student’s: (a) “Attention Problems and Atypicality [are] in the average range”; and (b) “Adaptability, Social Skills, Functional Communication [are] in the average range.”
 - It was noted that Student had met all three of the social emotional goals and both adaptive goals in the April 2021 IEP.
 - The teacher-completed portion of the Vineland-3 Domain-Level Adaptive Behavior Scales (Vineland-3) noted no challenges in the school setting: “Student is reported to be able to cooperate with peers, show concern for others, and compromise with others in the school environment.”
 - The Parent -completed portion of the Vineland-3 noted, at least in relation to the Student’s daily living skills, that the same were “in the adequate range in the home environment.”

In addition to the fact that the majority of the data supports a finding that the IEP team reasonably concluded in May 2022 that the Student no longer required specially designed instruction in either adaptive or social emotional, it is also notable that: (1) multiple data sources were reviewed prior to making the determination in question, including observations of the Student, several assessments, and the result of progress reporting; (2) based on the documentation provided to OSPI during this investigation, the Parent was afforded an opportunity to fully participate in the reevaluation process; and (3) as noted above, to the extent the Student did continue to display social emotional or adaptive needs, the IEP team had data to support a finding that these related principally to the Student’s communication needs, and so the IEP team developed communication IEP goals for the Student that focused on self-advocacy.

On the basis of the above, then, OSPI finds no violation.⁹

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

⁹ OSPI does note: it appears an independent educational evaluation (IEE) of the Student was completed on or about July 14, 2022. In accordance with Washington state special education regulations, the District’s evaluation group and the Student’s IEP team will need to consider the information in the July 2022 IEE to determine whether the data contained therein requires that any change be made to the Student’s IEP services. Again, though, OSPI finds the District followed proper procedures in removing adaptive and social emotional IEP services with the information available as of May 2022.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

IEP implementation was outside the scope of this investigation, but OSPI notes: during this investigation, the District extended the Parent an offer of compensatory education for certain services missed during the 2021–2022 school year: 39 hours of speech and language. OSPI recommends that the Parent consider this offer, and if the Parent wishes for the Student to access the same, for the IEP team, including the Parent, to collaborate on a schedule for the provision of said hours.

OSPI also notes: it appears an independent educational evaluation (IEE) of the Student was completed on or about July 14, 2022. In accordance with Washington state special education regulations, the District’s evaluation group and the Student’s IEP team will need to consider the information in the July 2022 IEE to determine whether the data contained therein requires that any change be made to the Student’s IEP services.

Dated this ____ day of July, 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.)