

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-152

PROCEDURAL HISTORY

On December 19, 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 Mount Vernon School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 21, 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 January 6, 2023, OSPI's investigator conducted a phone interview of the Parent.

On January 10, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to January 18, 2023.

On January 18, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on January 19, 2023. OSPI invited the Parent to reply.

On February 3, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on February 7, 2023. OSPI forwarded the information to the Parent on February 8, 2023.

On February 7, 2023, OSPI's investigator conducted a joint interview of the District contracted behavior specialist and the director of special education.

On February 8, 2023, OSPI's investigator consulted with two different OSPI special education staff members, both of whom are board certified behavior analysts (BCBAs) with significant experience utilizing positive behavioral interventions and supports for students with disabilities.

Throughout this investigation, OSPI's investigator conducted several interviews of the Parent, including on the following dates: January 6, January 20, January 23, January 24, January 27, and February 1, 2023.

OSPI considered all 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 December 20, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Since December 20, 2021, has the District followed proper procedures for implementing the Student's individualized education program (IEP)?
2. Since the beginning of the 2022–2023 school year, has the District followed proper evaluation procedures under the IDEA; specifically, did the District properly determine whether the Student had special education needs related to agoraphobia that necessitated a potential change in any IEP services?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural

safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

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 Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

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.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

Home Hospital Services: Home instruction consists of in-person tutoring for students who are temporarily unable to attend school for academic instruction due to a sickness or injury. The intent of home hospital services is to keep students current in their regular academic classes while they are temporarily absent from school. These services are provided at a student's home or hospital. Students with anxiety may qualify for home hospital services. "It should be noted that anxiety related to school attendance or school avoidance behaviors may be worsened by prolonged absences from school. The school should work closely with the student's family and provider to ensure students with anxiety are receiving appropriate treatment and have a plan for returning to school." *Home Hospital Services Guidelines* (OSPI 2022).

FINDINGS OF FACT

2019–2020 School Year

1. According to the Parent, on or about November 2019, the Student was enrolled in the District and on at least one occasion, the Student was placed in a 'soothing room'¹ when she became dysregulated.
2. An initial evaluation for special education eligibility of the Student was completed on March 5, 2020.

The March 2020 evaluation found the Student to be eligible for special education under the category of developmental delays, recommended specially designed instruction in reading, math, written expression, social-emotional-behavior, adaptive, communication, and motor, recommended related services of occupational therapy and paraeducator support, and recommended supplementary aids and services of paraeducator support.

¹ Single quotations indicated paraphrasing, an approximation of what the Parent said during an interview with OSPI's investigator.

The March 2020 evaluation mentioned, in part:

- Student demonstrated some elopement concerns, as well as some challenges related to following directions, maintaining attention, and aggression;
- Student demonstrated significant challenges with “social interaction [and] receptive and expressive language, [such that Student] present[ed] with diagnostic indicators that support a diagnosis of autism spectrum disorder”²;
- Student “generally seem[ed] disconnected from her surroundings [and] has difficulty making friends, and/or is unwilling to join group activities”;
- Student had “been observed to become overstimulated by the sensory input in her classroom setting”;
- Student “calm[ed] when in a...swing and when given joint compressions, both which provide deep pressure”; and,
- The evaluation group recommended, in part, that augmentative and alternative communication (AAC) devices be utilized with the Student.

2020–2021 School Year

3. During the 2020–2021 school year, the Student attended school in a different Washington school district and the Student’s IEP team completed a functional behavioral assessment (FBA) for the Student on February 18, 2021.

The February 2021 FBA was aimed at understanding the Student’s aggression, disruptive behavior, non-compliance, and elopement. It read, in part, “Self-injury behaviors are not currently occurring, but instances of Student hitting her head on the floor or running into doors or walls was reported by her previous IEP team.”

The February 2021 FBA recommended the Student’s IEP team, in part, develop a functional communication response, support the Student in increasing tolerance for delays to reinforcement, “transfer...effects of skill-based treatment to new people [and] new locations,” permit the Student “to have access to a space where she is able to get up and/or walk around at any time,” and utilize, with the Student, “visual schedules, predictable routines...tangible reinforcements, transition objects, redirection, preferred activities [and] AAC [devices].”

A behavioral intervention plan (BIP) was then developed.

4. The Student’s IEP team developed a new IEP for the Student on March 5, 2021.

2021–2022 School Year

5. At the start of the 2021–2022 school year, the Student was eligible for special education under the category of developmental delay, was in the second grade, and attended a different Washington state school district (prior district).

² A separate portion of the March 2022 evaluation read, “Probable autism (not formally diagnosed at this time).”

6. The Student's prior district IEP team amended the Student's March 2021 IEP on September 1, 2021.

The September 2021 amended IEP included annual goals in reading 1 (identification of first name), reading 2 (identification of uppercase letters), writing 1 (tracing uppercase letters), writing 2 (drawing a person from a model), math 1 (rote counting to 10), math 2 (counting sets of 1–10 objects), behavior 1 (reinforcement with omnibus mand), behavior 2 (tolerating denial), behavior 3 (participation in teacher-directed activities), adaptive 1 (responding to name), adaptive 2 (responding to 'come here'), adaptive 3 (requesting 'help'), adaptive 4 (arrival routine), communication 1 (labels of objects), communication 2 (labels of pictures), communication 3 (identification of body parts), communication 4 (one-step commands), communication 5 (expressive: 'I want X'), communication 6 (social communication: 1-Step Imitation), and, motor skills 1 (visual motor integration), with progress reporting at the semester via a copy of the goal page.

The September 2021 amended IEP provided the Student with the following accommodations: break area where the Student can move freely; sensory equipment and activities; alternative schedule; augmentative communication; behavioral reinforcement; short, concise directions; preferential seating; school-home communication system; staff proximity; visual schedule; and visual supports. The September 2021 amended IEP provided the Student with the following modification: grading – modified expectation.

The September 2021 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Adaptive: 122 minutes 5 times a week (to be provided by a special education teacher)
- Behavior: 75 minutes 5 times a week (to be provided by a special education teacher)
- Reading: 15 minutes 5 times a week (to be provided by a special education teacher)
- Math: 15 minutes 5 times a week (to be provided by a special education teacher)
- Written Expression: 15 minutes 5 times a week (to be provided by a special education teacher)
- Communication: 75 minutes 5 times a week (to be provided by a speech language pathologist (SLP))
- Communication: 30 minutes 1 time a week (to be provided by a SLP)
- Motor Skills: 30 minutes 2 times a month (to be provided by an occupational therapist (OT))

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

- Occupational Therapy: 30 minutes 2 times a month (to be provided by an OT)
- Individual Paraeducator Support: 1,645 minutes 1 time a week (to be provided by a paraeducator)

The September 2021 IEP provided the Student with the following supplementary aids and services in a *general education setting*:

- Individual Paraeducator Support: 20 minutes 5 times a week (to be provided by a paraeducator)
- Individual Paraeducator Support: 100 minutes 1 time a week (to be provided by a paraeducator)

7. According to the Parent, the Student transferred from the prior district into the District on or about January 2022, it was the Parent's understanding that the District should have adopted the prior district's IEP for the Student, but upon the Student's entry into the District, the District's IEP team 'changed the Student's IEP to their liking – not the Student's needs.'

The Parent further stated on occasion, the prior district permitted the Student to utilize a 'My Way Program'—essentially, the Student was permitted to choose a particular activity if the Student became emotionally dysregulated, but the District permitted the Student to utilize the 'my way program' with too much frequency, resulting in the Student, potentially, not accessing other IEP services.

In its response, the District stated:

The IEP from the [prior district] was initially adopted by the District effective January 3, 2022...[Once enrolled in the District, Student's program was based on] Skills-Based Treatment-My Way (SBT-MW) [which] is specially designed to support students impacted by suspected autism and associative anxieties through a trauma-sensitive lens.

8. The District resumed school following winter break on January 3, 2022.
9. According to the District's response, the Student's schedule for the spring 2022 semester was structured around the My Way Program.
10. According to emails, the Student's schooling began on January 18, 2022, because "staff that work[ed] with Student" were "out due to illness and [the District did not] have sufficient staffing."
11. In its response, the District stated as of January 2022, it did possess the February 2021 BIP that had been created by the prior district, but that the contracted behavior specialist was implementing a separate BIP that was specific to the My Way Program.
12. According to a February 10, 2022 incident report, on that date, the Student demonstrated elopement, disrobing, and aggression, and District staff attempted various interventions, including, at one point, a five-minute standing restraint.
13. The Student's IEP team developed a new IEP for the Student on February 23, 2022.

The February 2022 IEP included the following annual goals: math 1 (rote counting to 10); math 2 (counting sets of 1-10 objects); reading (identification of letters); writing (writing letters); adaptive 1 (responding to name); adaptive 2 (responding to 'come here'), adaptive 3 (requesting 'help'); adaptive 4 (follow routine); adaptive 5 (transitions); behavior 1 (request reinforcer); behavior 2 (tolerate delay of reinforcement); and behavior 3 (respond to teacher requests), with progress reporting at the semester via a copy of the goal page.

The February 2022 IEP provided the Student with the following accommodations: 1:1 behavior tech (BT); break area where Student can move freely; sensory equipment and activities; alternative schedule; augmentative communication; behavioral reinforcement; short, concise

directions; preferential seating; school-home communication system; staff proximity; visual schedule; and visual supports. The February 2022 IEP provided the Student with the following modification: grading – modified expectation.

The February 2022 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Adaptive: 300 minutes 5 times a week (to be provided by a special education teacher)
- Behavior: 334 minutes 5 times a week (to be provided by a special education teacher)
- Reading: 15 minutes 5 times a week (to be provided by a special education teacher)
- Math: 15 minutes 5 times a week (to be provided by a special education teacher)
- Written Expression: 15 minutes 5 times a week (to be provided by a special education teacher)

The February 2022 IEP provided the Student with the following related services in a *special education setting*:

- 1:1 Behavior Technician: 360 minutes 5 times a week (to be provided by a 1:1 BT)
- Occupational Therapy: 30 minutes 1 time a week (to be provided by an OT)
- Speech Language Pathology: 30 minutes 3 times a month (to be provided by a SLP)

A prior written notice related to the February 2022 IEP reads, in part, “[The IEP team will] continue placement [for Student] in the Structured Learning Classroom.”³

14. On February 28, 2022, the Parent emailed the special education teacher, stating, in part, “Does Student do any school work involving numbers, letters, her name? The reason I ask is because: that’s what they were doing at [her previous school].”

Later that day, the special education teacher responded, stating, in part, “As Student progresses with her My Way Program, these academic tasks will definitely be incorporated. Currently, we are working on building that program, and this will be the foundation for moving forward with her other goals.”

15. According to an email, dated March 23, 2022, the District requested the Student stay home that day, as multiple staff members were “out sick” and therefore, the District did “not have the staff to provide the 1:1 support that Student needs while being at school.”

16. On May 26, 2022, the Student’s IEP team amended the Student’s February 2022 IEP.

It appears the principal purpose of the May 2022 amendment was to provide the Student with extended school year (ESY) services during summer 2022. The related documentation read, in part, “Student qualifies for services in the areas of adaptive and behavior during ESY. Student will receive 1:1 support from a behavior technician for the duration of ESY.”

In relation to the ESY plan for summer 2022, the District’s response read, in part:

ESY would start on July 5, 2022 and conclude on August 11, 2022. [The] program would be three hours a day for four days per week [and be at] her existing program and location at

³ The prior written notice is actually dated January 18, 2022.

[the] elementary [school]. The primary focus...would be to reinforce tolerance of denial and reduction of problem behaviors while improving functional communication. Parents agreed with the ESY offer and indicated they planned on having the Student participate.

The May 2022 amended IEP included the following annual goals: math 1 (identifying numerals); math 2 (counting sets of 1–10 objects); reading (identification of letters); writing 1 (writing name); writing 2 (copying uppercase letters); adaptive 1 (requesting support); adaptive 2 (follow routine); adaptive 3 (transitions); behavior 1 (request reinforcer); behavior 2 (tolerate delay of reinforcement); behavior 3 (respond to teacher requests); communication 1 (yes/no questions); communication 2 (greeting and leave-taking); communication 3 (requesting); and communication 4 (express upset or resistance).

The May 2022 amended IEP included the same accommodations, modification, specially designed instruction, and related services as did the February 2022 IEP.

According to the District, during its review of the record during this investigation, it identified “an error” in the prior written notice related to the May 26, 2022 IEP meeting: according to the District, the May 2022 prior written notice should have “indicate[d] that the goals would be focused exclusively on behavior.”

17. According to the District, “Progress updates were given verbally in scheduled meetings on March 31, 2022 and May 25, 2022. There was no recording of [progress] within IEP Online.”
18. On June 10, 2022, the contracted behavior specialist emailed the Parent a list of games that the Student enjoyed playing on her tablet at school.
19. The District’s response included signed attestations, dated June 2022, from the OT, the case manager, and the SLP that they provided progress reports on the Student’s goals on or about the end of the 2021–2022 school year.
20. The District’s response included a billing statement from the contracted behavior specialist. According to the billing statement, the contracted behavior specialist provided services to the Student on approximately 104 occasions in spring 2022.
21. The District’s response included an SLP provider log for the spring 2022 semester. It showed, in part: the SLP worked directly with the Student for a total of approximately 395 minutes; on at least on occasion, the SLP consulted with the contracted behavior specialists; and there were several entries that stated the SLP had been scheduled to work with the Student but the Student was either absent or there was a “staff shortage.”
22. The District’s response included a document that, upon knowledge and belief, tracked the Student’s ability to engage in certain behaviors (relinquishing reinforcers, transitioning to learning, responding to direction, etc.) when working with either the contracted behavior specialist or a BT. This document shows the contracted behavior specialist and/or BT worked with the Student on these behaviors from late February through mid-June 2022.

23. The District's response included numerous entries on a "session notes" form (session notes).

The session notes were developed by the contracted behavior specialist's company. According to the District, the session notes represent narrative summaries written by the BTs that implemented the Student's specially designed instruction in behavior and adaptive.

The session notes show, in part:

- The contracted behavior specialist worked with the Student on approximately: 8 occasions in January 2022; 12 occasions in February 2022; 17 occasions in March 2022; 14 occasions in April 2022; 16 occasions in May 2022; and 13 occasions in June 2022;
- The contracted behavior specialist worked with the Student in the following areas: transitions; emotional regulation; following directions; keeping clothes on; and increasing tolerance for non-preferred activities;
- When working with the Student, the contracted behavior specialist utilized, in part, the following: visual communication aides, including pictorial images and a visual schedule; and an iPad as an AAC;
- The contracted behavior specialist, at least occasionally, commented on occupational therapy that was being provided to the Student;
- On occasion in spring 2022, the Student demonstrated elopement challenges; and,
- The Student demonstrated emotional regulation challenges, notably aggression and yelling, throughout spring 2022.

24. The District's response included numerous entries on a "Behavior Specialist Communication Log" form (BCBA communication log). Like the session notes, the BCBA communication log was developed by the contracted behavior specialist's company. According to the District, the BCBA communication log was a higher-level summary of the Student's progress and was written by the contracted behavior specialist.

The BCBA communication log included, approximately, the following number of entries: 3 for January 2022; 6 for February 2022; 12 for March 2022; 2 for April 2022; 7 for May 2022; and 5 for June 2022.

The BCBA communication log shows, in part:

- The individual completing the entries on the BCBA communication log either worked directly with the Student or supervised and gave insight to the Student's other service providers.
- In terms of direct service with the Student, the following were worked on with the Student: transitions; use of the iPad as an AAC; and strategies to prevent disrobing.
- In terms of supervision, the following recommendations were provided to the Student's various service providers: to praise the Student for appropriate behavior; to present the Student with choices; guidance on how to best communicate with the Student; and ideas for new fidgets and activities for the classroom.
- Entries mentioned, at least on occasion, occupational therapy being provided to the Student.

25. The District's response included both a "behavior tracking – outside of SBT" chart and an "AC behavior tracking" form (behavior tracking charts). These behavior tracking charts document yelling, verbal protest, swiping, throwing, dropping, property destruction, aggression, and elopement.

According to the behavior tracking charts, the Student demonstrated the foregoing behaviors on approximately the following number of times in the following months: January 2022, 72; February 2022, 62; March 2022, 70; April 2022, 150; and May 2022, 64.

According to the District, the behavior tracking charts show, in part, that the Student became emotionally dysregulated with decreasing frequency as the spring 2022 semester progressed.

26. The District's response included a chart that tracked certain service providers' work with the Student on the following goals: independent use of a mand; independent transitions to and from recess and the classroom; answering 'yes/no' questions; and answering 'no' to questions.

This chart shows these goals were worked on with the Student—at least in part—approximately 16 times in March 2022, 16 times in April 2022, 3 times in March 2022, 16 times in May 2022, and 13 times in June 2022.

27. The District's response included versions of graphs with titles, such as "greetings", "mands", "transition from recess", "answering yes questions", "answering no questions", "asking for help", "move please", and "quiet please." Generally, the data points on these graphs were dated between March and June 2022, and showed the Student's performance varied.

28. The Parent stated the last time the Student attended school was the end of the 2021–2022 school year, prior to the last several weeks of the 2021–2022 school year, the Student did not display a potential need resulting from agoraphobia, but during the last several weeks of the 2021–2022 school year, the Student did display a potential need resulting from agoraphobia.

29. The Mayo Clinic's website on agoraphobia includes, in part, the following information: "Agoraphobia involves fearing and avoiding places or situations that might cause panic and feelings of being trapped, helpless or embarrassed...Agoraphobia often results in having a hard time feeling safe in any public place, especially where crowds gather and in locations that are not familiar."

Summer 2022

30. According to the Parent, the IEP team planned for the Student to participate in certain services during summer 2022, but the Student's agoraphobia-related behaviors increased during this time.

31. Emails from July 2022 show, in part, the following:
- On July 1, the Student's mother emailed District staff, stating, "Since the last day of school, Student has been having a bit of a tough time getting back into her school routine...We have been trying to work with her. We are not sure how she will be this coming Tuesday."
 - On July 6, a District staff person emailed the mother, suggesting the Parents utilize a "1, 2 board" to help the Student transition between activities.
 - On July 6, the mother emailed District staff, stating, "Student is still not cooperating. We are not sure what we can do to get her to school. We have tried everything and even coached her through the break letting her know she will have school."

- On July 7, the mother emailed District staff, stating, "I am not sure what it is going to take to get her to school. We keep trying with her. But we do have to stop when she starts to harm herself. We have been talking to [a] children's hospital [doctor] and her neurodevelopment doctor, but they all say to wait for her ABA services in a couple months."
- On July 11:
 - The mother reported they tried numerous interventions with the Student to encourage the Student to leave the house to attend ESY, including, in part, redirection, "calm, soothing voices", one of the Student's communication devices, "bribing her with [a preferred item]", and "mention[ing] [the names of] all aides and teachers." But that these techniques had not worked, and at one point, "Student started hitting herself"; and,
 - The contracted behavior specialist took pictures of the Student's favorite places in the school, to provide to mother to show the Student.
- On July 12:
 - The Parent reported a concern that something had "happened" or been "said or done to Student during [the] last week of school, "and that this event possibly influenced the Student's refusal to engage with the ESY programming;
 - The mother picked up a "1, 2 board" transition board created by District special education staff; and,
 - The director informed the mother, "If Student is not in attendance in the ESY program by July 14, 2022, we will need to discontinue her program starting July 18, 2022." (The director stated this was due, at least in part, to program staffing considerations.)
- On July 13:
 - The mother reported the "Student won't be coming to school [and] we will be focusing on getting her ready for the school year [starting] September 7, 2022";
 - The Parent expressed a belief that the Student would benefit from in-home services; and,
 - The director responded to the Parent, stating, in part, "Please connect with...Developmental Disabilities Administration...who may be able to help you with accessing in-home services. Unfortunately, that is not something the District can facilitate for your family."

32. According to the District, "the ESY program for the Student was discontinued effective July 18, 2022."

33. On August 23, 2022, "a social worker at [a] children's [hospital with experience in the] neurodevelopmental clinic" emailed the District, stating in part, the Student had recently demonstrated an "[un]willingness to do what parents say (get dressed, go to summer school, go to medical appointments)."

34. On August 26, 2022, special education teacher emailed the mother, offering to meet "before the beginning of the school year." (The mother did not receive this email, as she had recently changed her email address.)

35. On September 3, 2022, via email, the Parent again expressed an interest in the Student receiving "in-home therapies [as the Student was continuing to experience] major meltdowns when [Parents] remind[ed] her of school."

36. On September 6, 2022, the mother emailed the special education teacher, stating, in part: "Student has been having trouble getting out of the house...We have been prompting her about school. I have taken a picture of the school and we have been showing her, using first and then, reminders, charts, etc."

2022–2023 School Year

37. The District's response read, in part, "The Student's specially designed program [for the 2022-2023 school year] was scheduled to begin on September 7, 2022."

At the start of the 2022–2023 school year, the Student continued to be eligible for special education services and was in the third grade. The District's response stated, in part, the Student "was expected to, but never [did], attend a District elementary school, and Student's May 25, 2022 [amended IEP] was in effect."

38. According to the Parent, as of fall 2022, the Student continued to display agoraphobia-related behaviors, more specifically, the Parent stated, 'Student never goes into the living room – she only stays in her bedroom. Student cannot stay in the living room for more than 5 minutes,' and the Student received services through Wraparound with Intensive Services (WISE).⁴

39. On September 7, 2022, the Parent emailed District staff, stating, in part, "Student scratched her own forehead when we calmly mentioned school."

40. The District's response included a communication log that tracked the Parent's communication with various District staff. A September 8, 2022 entry on the communication log read, in part, "Student is having a meltdown when the [family] mention[s] school."

41. The Student's IEP team met on September 15, 2022, to discuss, in part, how to address the Student's emotional challenges regarding getting ready for school in the morning. A prior written notice related to this meeting read, in part:

Contracted behavior specialist will ride a special services bus to Student's house...and [the contracted behavior specialist] will use language, visuals, and other techniques that are familiar to Student in order to support Student in transitioning from home to the bus, and then to school.

...

Parents are on waiting lists to receive services through a [behavioral consulting group], a [county-affiliated] pediatric [group], the WISE program...and the Developmental Disabilities Administration.

⁴ According to the Washington State Health Care Authority, "WISE is an approach to helping children, youth, and their families with intensive mental health care. Services are available in home and community settings and offer a system of care based on the individualized need of the child or youth. WISE is a voluntary service that takes a team approach to support [the child] and [the child's] family in meeting...goals." <https://www.hca.wa.gov/free-or-low-cost-health-care/i-need-behavioral-health-support/wraparound-intensive-services-wise>

In its response, the District explained that the IEP team proposed, "changing transportation from Parent-provided to a yellow school bus [because] both Parents and the school team...agreed that a yellow school bus is a preferred interest for the Student."

42. According to emails and the communication log, on September 19, 2022, the mother utilized a behavior and/or story chart created by the contracted behavior specialist to prepare the Student for riding the school bus that morning to school, two contracted behavior specialists attempted to engage the Student while they stood on the porch, but the Student refused to come into the living area.
43. On September 21, 2022 (and later on October 5), the director emailed the Parent and mother, stating, in part, the IEP team believed it would negatively affect Student's anxiety to continue to pursue the type of intervention pursued the morning of September 19, 2022, and District staff were prepared to "assist...in developing social stories or visuals", if the family desired that support.

The director's email read, in part:

I would also encourage you to continue work with DDA, [county-affiliated] pediatrics, and the WISE team, along with any other state agencies that may provide access to resources and supports for the home, inclusive of respite services. This embedded in-home support would be essential to the process of reengaging Student in attending school regularly.

44. A September 21, 2022 entry on the communication log mentioned that the Parent stated the Student was still on "the waiting list for ABA and...wraparound [services through WISE]."
45. On September 22, 2022, the Parent again requested some form of in-home services for the Student.
46. On October 12, 2022, the director emailed the Parent, stating, in part, "We stand ready to provide Student with her school program when you are able to get her to leave the home. I would encourage you both to continue to work with state and community-based providers that can assist you in getting Student to...school."
47. According to the communication log, in mid-October 2022, the Parent contacted the District several times, stating the Student's recent absences should be marked as excused, as they resulted, at least in part, from the Student's agoraphobia needs resulting from the Student's disability.
48. The Student's IEP team met on October 14, 2022. A prior written notice, dated October 14, 2022, read, in part:
Description of the proposed or refused action: This meeting was proposed by Student's mother to talk about options to help Student leave the family's home and transition back to school. To date, Student's medical/psychiatric care providers have mentioned to the parents preliminary diagnoses of Autism Spectrum Disorder, Agoraphobia, and Generalized Anxiety Disorder. Student has not been able to cope with leaving the home to attend medical appointments; telehealth has been used in the meantime.

...

The reason we are proposing or refusing to take action is: Student's IEP will be resumed once she returns to school.

Description of any other options considered and rejected: The WISE care coordinator inquired about home-hospital services for Student. This option was rejected; in-home tutoring would not support Student's transition outside of the home.

The reasons we rejected those options were: Director and the WISE care coordinator can coordinate and pursue services from [the behavioral consulting group], with the intent [that the behavioral consulting group] staff [will] support...Student's transition between the home to the school bus. Student's school-based BCBA support will immediately assume [responsibility for the] Student's transition from the school bus into the school, at which time her IEP will be resumed.

...

Any other factors that are relevant to the action:...The team discussed Student's preference for swinging as a regulation tool. The team will consult with [OT] who facilitates Student's Fine Motor IEP goals regarding sensory swing options.

Student's contracted behavior specialist will coordinate with parents to schedule a video call with Student, to maintain familiarity with her support professionals and her classroom. The contracted behavior specialist can also provide visual schedules to the parents.

49. On October 17, 2022, the contracted behavior specialist emailed the mother, stating, in part, "Below is the link to use tomorrow morning for the morning greeting we plan."
50. According to emails, dated October 18, 2022, beginning on or about that date, the District and family began to implement a plan whereby three days a week, in the morning, the Student would watch a prerecorded video of school staff, and two days a week, in the morning, the Student would have a live video call with a District staff person, usually the contracted behavior specialist. According to emails, this intervention was an effort to address the Student's potential anxiety about leaving her room and going to school in mornings.
- Documentation reviewed during this investigation shows, in part, these daily video check-ins happened on a regular basis between late October and late November 2022.
51. On October 19, 2022, the Parent emailed the contracted behavior specialist and the District's HR director, stating, in part, "Student's caseworker had to explain to the special education director that it is not [the responsibility of] DDA [or] WISE to get Student into school."
52. On October 21, 2022, the director emailed the Parent, stating, in part, "The District stands ready to provide Student with her school program when you are able to physically get her to leave the home. We are also working collaboratively with the engaged community providers to accomplish this goal from our end."
53. On October 26, 2022, the director emailed the behavioral consulting group, stating, in part: Per our conversation the other day, the District would like to propose having [your practice group] initiate in-home strategies [and] supports for the WISE team and [offer support to]

Parents that reinforce the reengagement of Student in attending school. I would recommend we coordinate [your firm's visits] with WISE team during their [own] scheduled visits.⁵

54. A November 2, 2022 prior written notice read, in part:

Description of the proposed or refused action: Proposal to initiate additional home-based transitions support via [the behavioral consulting group] for temporary in-home ABA consultation and support.

The reason we are proposing or refusing to take action:...The behavioral consulting group will coordinate with WISE support during home-based sessions. Proposed activities include transitioning Student to highly-preferred locations outside of the home. The intent is to eventually generalize to an educational setting.

Description of any other options considered and rejected: The option for the IEP team to continue with consultation with the WISE team was considered, but rejected.

55. On November 7 and 15, 2022, the behavioral consulting group conducted observations of the Student in the family home. Later, the behavioral consulting group created an 'Observation/Recommendation Summary' (consulting group report). The consulting group report, read, in part:

The WISE team...stated that, despite the fact that the student's parents were very skilled in planned ignoring and behavior management, the student demonstrated increasing challenges with attending school concurrent on traumatic attempts to have her attend school, and that student was reported to have emotional behavior that prevented her from entering the living room of the home.

...

The consultant observed that student spent the entire observation in the back part of the house, and repetitively watched videos on a tablet while in a swing or on a bed. She responded when greeted and made strong eye contact despite the lack of vocal communication, and was able to reciprocally imitate some fine and gross motor movements when modeled by the consultant, including putting out her pinky finger. The consultant observed that student's tolerance for interaction was fairly strong given her reported isolation and history, but still much less than same aged peers.

...

The consultant recommended increased use of students AAC device, and that the clinical and school teams collaborate to add more home items to the AAC device.

[The consultant further recommended] Parents...is the tablet contingently to shape student to entering other parts of the house. This was recommended to the family to help set reasonable limits around tablet use, and minimally, to gradually begin the process of bringing student to school. Given parents objections to physically removing the tablet, the consultant recommended that the parents turn the Wi-Fi in the house off.

...

⁵ The District's response read, in part, "The school-based team proposed coordinating in-home supports through a private contractor to support [the other, non-District service providers utilize] Applied Behavioral Analysis (ABA) strategies...in the home for reengagement in school."

Student's parents seemed uncertain about the suggestions...The WISE team was supportive of the consultant's suggestions...That the family was a bit disengaged from the discussion. [For example], the television was on during the discussion and the student's father seem to attend more with the television and appeared more interested in raising objections.

During the second visit, the consultant noted that neither recommendation above have been implemented, and that the AAC device was still in the same position as the previous week. The consultant was successful in getting the student to come into the front room of the house by moving the tablet into the front room while she was engaged with other things. This occurred briefly and appeared to upset the parent, but not the student, to a significant degree. The WISE clinician spoke to the consultant outside and evinced concern about upsetting the father. After these occurrences, the consultant concluded that the family's reticence was a primary barrier to school attendance.

56. The District's response read, in part, "Student was withdrawn from the District on November 30, 2022, due to a lack of attendance (more than 20 consecutive days absent)."
57. The Parent stated the Student had a therapy consultation sometime in winter 2022–2023, and the therapist subsequently informed the Parent the November 2019 incident regarding the Student being placed in the 'soothing room' was likely one reason for the Student's agoraphobia regarding the school environment.
58. On December 1, 2022, the director emailed the Parent, stating, in part, "The District has discontinued the good faith attempts to provide in-home ABA interventions that we initiated via [a behavioral] consulting [group]. This was discontinued due to a lack of progress towards the goal of attending school."

In a separate email, dated December 1, 2022, the Parent mentioned the Student had not been provided access to either speech or occupational therapy during the fall 2022 semester.

59. The Student's IEP team met on December 13, 2022. A December 13, 2022 prior written notice read, in part:

Based on the conclusion of the behavioral consulting group report, Student's parents have not demonstrated participation with the recommendations. Based on the conclusion of the school-based team, Parent has habitually created a barrier to Student's access to her special education programming.

...

The WISE therapist stated that Student experienced trauma at some point between June 2022 and September 2022, and that trauma is not known, but can be something innocuous like a color or scent that Student perceives is related to school.

Parent stated that Student demonstrated a trauma response during the last week of school in June 2022; her anxiety increased and she 'became terrified'. Parent additionally stated that Student's agoraphobia was caused by the unexpected presence of the contracted behavior specialist and a school bus outside the home which occurred in September 2022. [But, District notes:] his was a pre-arranged plan with the agreement of parents.

...

Upon the family's ability to bring Student to school, director confirmed that Student's enrollment can be reinstated, and thereby would reinstate her special education programming. Parent accepted the proposal for Student's mother to accompany Student into the school and remain present during her school day for a temporary basis in an effort to alleviate a potential trauma response. And a trained staff person will be available to help Student transition from the family's car to the school building.

Parent accepted the proposal for a reduced daily schedule.

The contracted behavior specialist confirmed that the specialized ABA program that was implemented...from January-June 2022 was replicated from the specialized ABA program that was implemented at [the Student's elementary school] in the [previous Washington State] school district.

The contracted behavior specialist also facilitated video calls with the family in an effort to maintain familiarity. Those calls were discontinued because it was confusing for Student.

...

The school district will continue to provide an AAC device for Student at home. WISE can get AAC tech access with the help of the District's assistive technology coordinator.

On the date of this meeting, a BECCA notice was filed. This will initiate court proceedings (truancy court) in an effort to resolve barriers to Student's participation at school.

The December 13, 2022 prior written notice also noted the director requested the Student's family provide the District with any medical-related documentation it had in its possession regarding the Student's agoraphobia-related needs.

In relation to the December 13, 2022 IEP meeting, the Parent stated the Parent requested an out-of-District transfer, but the Student's IEP team rejected this proposal, and the Student's IEP team rejected the option of reevaluating the Student, despite the increased, potential need in the area of agoraphobia.

60. The Parent stated, as of January 2023, the family is 'trying to coax Student into the living room – that is our first step,' the Student started a new medication, and the Parent believes in-home services are most appropriate, until the Student's agoraphobia concerns are addressed such that she can leave the home.

61. In relation to the Student's potential agoraphobia-related needs, the District's response read, in part:

[As of January 18, 2023], here is no provided evidence, diagnosis or medical documentation specifically documenting agoraphobia. The only mention of agoraphobia occurred while Parent was participating...in the meeting held on October 14, 2022, and again on December 13, 2022.

The school-based IEP team, in addition to contracted private consultants...have all concluded the Student's most substantial educational impacts and barriers to learning are a result of developmental delays...due to suspected autism, associative anxieties, [and] limited-to-no functional communication and substantial cognitive [impairments]. The

school-based IEP team and contracted specialists are in agreement that general anxiety disorder, including agoraphobia, are associative anxieties that are commonly seen in individuals impacted by substantial autism.

...

[The Skills-Based Treatment (My Way)] is specially designed with embedded trauma-informed practices considering the Student's history...Because of the demonstrated effectiveness of this program when routines were established, the Student was successfully served on-site [during the] 2021–2022 school year.

62. On February 7, 2023, OSPI's investigator conducted a joint interview of the contracted behavior specialist and the director. OSPI's investigator's notes from that interview are, in part, as follows:

Staffing Notes: The contracted behavior specialist supervised and designed the implementation of the My Way Program and the provision of adaptive and behavior specially designed instruction to the Student. The BTs, three different individuals, implemented the My Way Program and the provision of adaptive and behavior specially designed instruction.

Description of the My Way Program: The My Way Program is used with students that have more intensive behaviors – students that might engage in problem behavior to either get what they want or to communicate. The principal objective is to teach students functional communication and tolerance for nonpreferred activities and/or academic tasks.

'We know that kids learn from a place of being happy, relaxed, and engaged. A big premise of My Way is letting the kids become happy, relaxed, and engaged before having them try things that are hard for them. We try to build trust and communication with the Student.'⁶

Staff utilized Student's AAC device in working on improving the Student's functional communication.

'We exposed Student to harder tasks incrementally – [in an effort to] build trust with the client.' With Student, tolerance of denial was a challenge – as telling the Student 'no' could be a trigger for an emotional reaction. 'As part of access to the My Way Program, Student got access to preferred items, like toys, games on iPad, etc. '

Implementation of Academic Goals: 'Academic goals were not being targeted at the start of the spring 2022 semester. We needed the buy-in from the Student...When we first met Student, transitioning to the table to do work itself triggered aggression and elopement.'

'The My Way Program intervention was really helpful to Student.' 'The target was to get to table and complete work. [On a given occasions, staff and the Student] might get to the table and do 30 seconds of work, then [gradually improve to] a couple minutes of work, etc.'

'By the end of the spring 2022 year, we had not gotten to academics but had made substantial progress with the My Way program.'

⁶ Single parentheses signify paraphrasing, an approximation of what the contracted behavior specialist said.

Implementation of Specially Designed Instruction in Behavior and Adaptive: By the end of the school year, the Student was generally able to relinquish a preferred item and get to the academic worktable.

'There was definitely progress with the behavior goals. It did not fully eliminate behaviors, but behavior frequency was reduced – and duration and intensity were also reduced. Student was making a lot of progress once she understood what the My Way program was...and that she was not going to be forced to do unwanted tasks.'

Regarding the adaptive goals, 'I know without even having to look at the data that there was improvement here. When we first met Student, she just played and did not want to have anything to do with staff members. We did still see some behaviors when transitioning in from recess which is something we specifically worked on, but transitions improved throughout spring.'

Visual Schedule: A large print schedule was on the wall near the Student's desk. There was a large strip of Velcro and different activities would be placed on the Velcro strip. 'Student enjoyed this and would take pieces off as they were completed herself.'

Occupational Therapy: Director: 'We weren't doing a lot of focus on having the OT come in. SLP and OT started coming in in late April or early May. This was because of building Student's tolerance to these staff persons being in the Student's space.'

Contracted Behavior Specialist: 'Student would be upset that this person was giving demands...[these staff were] slowly [introduced] and [our behavior specialist consulting company] would collaborate with the SLP and OT on how to best work with Student, etc.'

Staffing at Start of Spring 2022 Semester: The contracted behavior specialist's company was 'not able to staff right away.' For the first month or so, District paraeducators worked with the Student. But the contracted behavior specialist noted her company was involved from the beginning. For example, the contracted behavior specialists trained the District paraeducators on how to implement the My Way Program the first several weeks of the spring 2022 semester. And the District paraeducators had previous experience with the My Way Program.

Student's Transition to District: In early December 2021, District staff observed Student at Student's prior school – to ensure the District was able to replicate the particular type of My Way Program the Student needed when Student enrolled in the District in spring 2022.

The contracted behavior specialist was not able to attend the December 2021 visit, but was able to get copious notes from the District staff members that did attend.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not follow proper procedures for implementing the Student's IEP in spring 2022.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the

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

Here, the documentation shows the following portions of the Student's IEPs were materially implemented during the spring 2022 semester: specially designed instruction in adaptive and behavior; 1:1 support⁷, and speech language pathology. The District's response included numerous documents that detailed both (1) the Student's progress on the Student's adaptive and behavior goals, and (2) recorded the provision of adaptive, behavior, and SLP services to the Student, including, in part, the contracted behavior specialist's billing statement, the SLP provider log, the BCBA communication log, the contracted behavior specialist's session notes, and several behavior and adaptive tracking charts and graphs. Additionally, during her interview with OSPI's investigator, the contracted behavior specialists spoke in depth about the provision of specially designed instruction in adaptive and behavior to the Student, as well as the contracted behavior specialist's collaboration with the SLP. In sum, for the foregoing portions of the Student's respective IEPs, OSPI does not find a material implementation failure.⁸

In relation to the accommodations included in the Student's various IEPs, OSPI notes that many of the accommodations related, in significant part, to the provision of specially designed instruction in adaptive and behavior to the Student, which, as detailed above, was materially provided to the Student during the spring 2022 semester. Emails, the session notes, the BCBA communication log, and the interview with the contracted behavior specialist all show an augmentative and alternative communication (AAC) device was utilized with the Student, and during her interview with OSPI's investigator, the contracted behavior specialists was able to speak in detail to the Student having been provided with a large print, daily schedule near her desk. In sum, OSPI finds the accommodations in the Student's various IEPs were materially implemented in spring 2022.

This investigation did, though, identify two IDEA violations related to spring 2022.

Violation 1: The first of these violations relates, in part, to the following requirements: (1) a student's IEP must be implemented as written; and (2) parents of students with IEPs are equal participants with school personnel in developing reviewing, and revising the IEP for their child, and parents must be made fully aware of issues related to the student's identification, evaluation,

⁷ The September 2021 IEP defined the relevant service as "individual paraeducator support," and the February 2022 and May 2022 amended IEPs defined the relevant service as "1:1 behavior technician support."

⁸ Emails and the interview with the contracted behavior specialist did note that the contracted behavior specialist's company was not able to provide staffing between January 3, 2022 (when the District resumed schooling following winter break) and January 17, 2022. However, this same documentation shows, during this time, District-employed paraeducators worked with the Student, the behavior specialist's company provided supervisory guidance and instruction to these paraeducators, and the District-employed paraeducators had previous experience with the My Way Program, and were thus able to implement said program for the Student.

placement, or provision of a free appropriate public education (FAPE) to their child, principally through timely and thorough prior written notices.

Here, the Student's various IEPs provided the Student with academic specially designed instruction to be implemented in spring 2022, following the Student's enrollment in the District in January 2022. After the Student enrolled, the Parent was informed the Student would be provided with the My Way Program, and the Parent was generally aware that the My Way Program was geared towards students who had unique behavioral needs resulting from their respective disabilities, and that a significant element of the My Way Program was permitting a student to decide how to spend significant portions of their school day. Based on the data on the Student's needs resulting from the Student's disability, the My Way Program was an appropriate placement for the Student and one the IEP team, including the Parent, agreed on. Ultimately, during the spring 2022 semester, until the last several weeks of the semester, the Student was not provided with significant academic specially designed instruction or occupational therapy services⁹ in alignment with the My Way Program's unique approach to students with behavioral needs.¹⁰ Overall, during the spring 2022 semester, the My Way Program was a generally successful intervention for the Student—the director and contracted behavior specialist reported, by the end of the semester, the Student displayed more comfort with her surroundings and the District staff members that she worked with, and was able to focus on academic specially designed instruction much more than at the beginning of the semester. However, the Parent was never clearly and unequivocally informed that, as part of the My Way Program, the Student's access to academic specially designed instruction would, at least initially, be very limited.

While the implementation plan seems to be appropriate to address the Student's needs, it does mean that the Student's IEP was not implemented as written. The foregoing represents an IDEA violation. The Student's various IEPs should have noted the time the Student spent receiving academic specially designed instruction would gradually increase, increasing alongside the Student's expected progress on behavior and adaptive goals, or the IEP should have been amended at additional points. At the very least, the Parent should have been provided with a prior written notice that clearly outlined the specific and unique approach of the My Way Program, that the amount of the Student's time receiving academic specially designed instruction would gradually increase throughout the spring 2022 semester. Therefore, OSPI finds an IDEA violation

⁹ The contracted behavior specialist explained for most of the semester, the Student 'might get to the table and do 30 seconds of work, then [gradually improve to] a couple minutes of [academic] work, etc.:'; but it was not until near the end of the semester that the Student was able to focus for lengthier periods of time on academic specially designed instruction, and the occupational therapist did not begin working with the Student until late April or early May.

¹⁰ For example, the director and contracted behavior specialist explained the entire purpose of the My Way Program is to address behavioral needs first, to build trust with a student by permitting that student to, at least initially, determine how to spend significant portions of their school day. And then to gradually build tolerance for, and introduce, non-preferred and/or academic-related tasks.

with respect to the fact that plan for IEP implementation was not documented and communicated clearly.

As a corrective action, the District will be required to provide certain District staff with a training regarding communication-related IDEA requirements, principally that IEPs must be implemented as written and that prior written notices should fully be informed of issues related to their student's identification, evaluation, placement, or provision of FAPE.¹¹

Furthermore, if the Student were to be reenrolled in the District, OSPI strongly encourages the Student's IEP to convene to discuss appropriate goals for the Student, in accordance with the above findings.

Violation 2: 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.

Here, the documentation shows the following: the Student's various IEPs stated progress was to be reported to the Parent via a "copy of [the] goal page" at the end of each semester and through various documentation (such as the contracted behavior specialist's session notes, the BCBA communication log, and the behavior tracking charts), the Parent was likely provided with some data related to the Student's progress on her adaptive and behavioral goals. However, the Parent was not provided with a "copy of [the] goal page" at the end of the spring 2022 semester, with said goal page detailing where the Student stood on each of her IEP goals. This represents a failure to follow proper progress reporting procedures.¹²

As a corrective action, the District will be required to review the data available on the Student's progress on her IEP goals as of the end of the 2021–2022 school year; create a progress report for each of the Student's IEP goals as of the end of the 2021–2022 school year, and provide a copy of the same to the Parent. Additionally, the District will be required to provide certain District staff with training regarding proper progress reporting procedures.

¹¹ Compensatory education is not warranted under these circumstances. As detailed, the Student's IEP team, including the Parent, determined the My Way Program was appropriate for the Student, the data on the Student's needs resulting from the Student's disability supports the use of the My Way Program, the District did implement the My Way Program throughout the spring 2022 semester, and the Student did make behavioral and adaptive progress throughout the spring 2022 semester.

¹² In finding this violation, OSPI further notes that in this particular case, it would have been especially helpful for the District to provide the Parent with a copy of the goal page reporting the Student's progress at the end of the spring 2022 semester. First, the District's response included several goal tracking-related charts a layperson may not have understood how to read. Second, upon knowledge and belief, it appears the goals in the May 2022 amended IEP are not the exact same as the goals in the February 2022 IEP. For these two reasons, it would have been helpful for the District to provide the Parent with a copy of the goal page reporting the Student's progress at the end of the spring 2022 semester.

Issue 2: Reevaluation Procedures – The Parent alleged since the beginning of the 2022–2023 school year, the District did not follow proper reevaluation procedures, specifically that the District did not follow proper procedures for determining whether the Student had special education needs related to agoraphobia.

An IEP team must be responsive to any potential change in need resulting from a student’s disability. Being responsive to a potential change in need might resemble a revision of a student’s IEP services. For example, a student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters.

Being responsive to a potential change in need might also resemble conducting a reevaluation of a student. For example, a school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation. Additionally, an IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student’s needs resulting from the student’s disability.

Here, the Student demonstrated a potential change in needs resulting from the Student’s disability as the 2021–2022 school year ended. For example, beginning at that time, the Student demonstrated a refusal to physically leave the family house to attend school, for both extended school year (ESY) services in summer 2022 and the school year beginning September 2022. The Parent reported these behaviors resulted from agoraphobia, an anxiety disorder that results in individuals avoiding certain places and situations they perceive to be threatening. In response, the Parent requested that in-home services be provided to the Student.

In response, the District undertook at least three actions: (1) on at least one occasion, District staff visited the Student’s home to encourage the Student to transition to school, which was unsuccessful; (2) the District contracted with a behavioral consulting group to visit the family home to provide some services and observe the Student over two days in November 2022; and (3) a District teacher briefly, and remotely, checked in with the Student most school days, to keep the Student exposed to, and interested in, the school environment.

While OSPI acknowledges that this was a complicated situation, for three reasons, OSPI finds the District failed to properly respond to a potential change in need resulting from the Student’s disability.

First, the District appeared to take the position that there are no circumstances under which a district is obligated to provide special education services in a student’s home. For example, in part: on or about July 13, 2022, the director emailed the Parent, stating, “Please connect with...[the] Developmental Disabilities Administration...who may be able to help you with accessing in-home services. Unfortunately, that is not something the District can facilitate for your family”; on July 21, 2022, the director emailed the Parent, stating, “At this point there is nothing further the school

can do for you. Please follow-up with your DDA case manager regarding any questions pertaining to in-home services"; on August 23, 2022, the special education teacher emailed the director and the contracted behavior specialist, stating, "I do not think I will have any new ideas to propose as ways to support Student in being able to successfully transition to school, unless we want to revisit the idea of having [contracted staff] start off the year by going to the family's house"; on September 21, 2022, the director emailed the Parent, stating, "I would also encourage you to continue work with DDA, [county-affiliated] pediatrics, and the WISE team, along with any other state agencies that may provide access to resources and supports for the home"; and on October 12, 2022, the director emailed the Parent, stating, "We stand ready to provide Student with her school program when you are able to get her to leave the home. I would encourage you both to continue to work with state and community-based providers that can assist you in getting Student to...school."

To the extent the foregoing statements reflect a belief there are no circumstances under which a district is obligated to provide special education services in a student's home, OSPI notes this is not accurate. Each district must ensure a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions.¹³

In this case, the Student's IEP team should have considered whether the Student required a homebound placement. Homebound placement represents an individualized determination by a student's IEP team and the contours of this placement will look different for each student.

Alternatively, the Student's IEP team could have considered providing, on a temporary basis, services in the Student's home under a home hospital framework. Regarding home hospital, OSPI's *Home/Hospital Services Guidelines* document reads, in part:

Home instruction represents in-person tutoring for students who are temporarily unable to attend school for academic instruction due to a sickness or injury. The intent of home hospital services is to keep students current in their regular academic classes while they are temporarily absent from school. These services are provide at a student's home or hospital. Students with anxiety...may qualify for home hospital services.

It should be noted that **anxiety related to school attendance or school avoidance behaviors may be worsened by prolonged absences from school. The school should work closely with the student's family and provider to ensure students with anxiety are receiving appropriate treatment and have a plan for returning to school.**

(emphasis added).

¹³ OSPI notes a recent due process decision found it was appropriate for a district to explore providing interventions in the student's home for a student experiencing school refusal behaviors. See OSPI Cause No. 2020-SE-0058 (WA SEA).

Here, the important principal to note is that in contrast to the above-quoted statements by District staff, specially designed instruction can be provided to a student in a student's home, if the IEP team determines that is an appropriate placement for the Student. As detailed throughout this section of the conclusions, the Student's IEP team should have met to specifically determine the Student's potential change in need resulting from the Student's disability, and whether the Student would have benefited from certain services being provided in the family home or, even if temporarily, in a school location different from that of the Student's 2021–2022 school.

Second, the documentation includes at least one District statement that appeared to take the position that a student's failure to make progress on IEP goals is a sufficient basis to discontinue the provision of IEP services. For example, a District-authored email, dated December 1, 2022, read, in part, "The District has discontinued the good faith attempts to provide in-home ABA interventions that we initiated via [a behavioral] consulting [group]. This was discontinued due to a lack of progress towards the goal of attending school." The foregoing statement is inaccurate; a student's failure to make progress on IEP goals is not a sufficient basis to discontinue the provision of IEP services. As detailed throughout this section, if a student is demonstrating a potential change in need resulting from the student's disability, either the IEP should be amended, a different support or strategy tried, and/or a reevaluation should be conducted.

Third, for three reasons, the District should have attempted to conduct a reassessment of the Student in the fall of 2022. First, throughout the documentation, the District acknowledged the Student's needs resulting from the Student's disability appeared to have changed, and that some form of service change needed to take place as a result. For example, the District's response acknowledged the District staff agreed that, during the relevant time period, the Student was demonstrating "suspected autism, associative anxieties, [and] agoraphobia," and on September 21, 2022, the director emailed the Parent, stating, in part, "embedded in-home support would be essential to the process of reengaging Student in attending school regularly." Second, the District did have, within its possession, information from sources other than the Parent's own statements that the Student's needs resulting from the Student's disability had changed. For example, on August 23, 2022, "a social worker at [a] children's [hospital with experience in the] neurodevelopmental clinic" emailed the District, stating in part, the Student had recently demonstrated an "[un]willingness to do what parents say (get dressed, go to summer school, go to medical appointments)," and the December 13, 2022 prior written notice read, in part, "The WISE therapist state that Student experienced trauma at some point between June 2022 and September 2022." Third, as of fall 2022, it had been a comparatively long time since the last evaluation of the Student was completed—an evaluation was completed in March 2020 and a functional behavioral assessment (FBA) was completed in February 2021, both by different Washington state school districts. For the foregoing reasons, the District should have attempted to conduct a reassessment of the Student in the fall of 2022.

For the above-stated reasons, OSPI finds an IDEA violation: the District did not follow proper procedures to respond to a potential change in need resulting from the Student's disability.

To remedy this violation, the District will be required to undertake several actions. First, the District will reenroll the Student. Second, the Student's evaluation group, including the Parent, will meet to determine the areas in which the Student needs to be reevaluated. And the District will seek the Parent's consent for the same. Third, some form of compensatory education is warranted, to account for the fall of 2022. For example, as detailed above, if proper procedures had been followed, the Student's IEP team should have begun providing some form of services to the Student relatively early in the fall 2022 semester. And if consent for a reevaluation had been completed early in fall 2022, then a new IEP would likely have been developed for the Student on or about early November 2022.¹⁴ When completed, the District will provide OSPI with a copy of the newly developed IEP, and OSPI will review it to determine appropriate compensatory education.

During the reevaluation process, the District should consider all service delivery models in addressing the Student's needs resulting from the Student's disability.

CORRECTIVE ACTIONS

By or before **February 24, 2023, March 3, 2023, March 6, 2023, March 15, 2023, April 3, 2023, and April 26, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Provide Parent with Copy of Progress Report

By or before **March 3, 2023**, the District will review the data available on the Student's progress on her IEP goals as of the end of the 2021–2022 school year, create a progress report for each of the Student's IEP goals as of the end of the 2021–2022 school year, provide a copy of the same to the Parent, and provide OSPI with documentation showing the foregoing steps have been completed.

Reenrollment of Student

By or before **February 24, 2023**, the District will reenroll the Student.

Evaluation Group Meeting, Development of New IEP, and Compensatory Education

By or before **March 3, 2023**, the Student's evaluation group, including the Parent, will meet to determine the areas in which the Student needs to be reevaluated. On or about this same time, the District will seek the Parent's consent for the reevaluation.

By or before **March 6, 2023**, the District will provide OSPI with any documentation related to the foregoing, including meeting invitations, meeting notices, prior written notices, consent forms, etc. The prior written notice will summarize the evaluation group's decisions.

¹⁴ A reevaluation must be completed within 35 school days after a district receives consent from the parent, and an IEP must be developed, based on a reevaluation, in a timely fashion. Here, the District's first day of school was September 7, 2022 and 35 school days after that date is approximately November 1, 2022.

Within three business days of the completion of the reevaluation, the District will provide OSPI with a copy of the reevaluation report. (Upon knowledge and belief, this date will likely be on or about April 26, 2023.)

Within three business days of the development of the new IEP, the District will provide OSPI with a copy of the same. OSPI will then review the newly developed IEP to determine an appropriate compensatory education remedy, and establish deadlines regarding the same.

During the reevaluation process, the District should consider all service delivery models in addressing the Student's needs resulting from the Student's disability.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2021–2022 and 2022–2023 school years. The training will cover the following topics:

1. IEPs must be implemented as written;
2. Prior written notices should fully be informed of issues related to their student's identification, evaluation, placement, or provision of FAPE;
3. Proper progress reporting procedures; and,
4. The continuum of potential placement options available to students with IEPs, including homebound.

The training will include examples.

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the above topics. The District will provide the trainer with a copy of this decision, SECC 22-152.

By or before **February 24, 2023,** the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **March 15, 2023,** the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 20, 2023.

By **March 31, 2023,** the District will conduct the training regarding the topics raised in this complaint decision.

By **April 3, 2023,** the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this 16th day of February, 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.)