

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-154

PROCEDURAL HISTORY

On October 30, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the Complainant regarding a Student (Student) attending the Edmonds 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 October 30, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 31, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 17 and 28, 2023, OSPI received the District's response to the complaint. On November 30, 2023, OSPI provided the Complainant a redacted version of the District's response, with all personally identifiable information on the Student removed from the District's response.

On December 14, 2023, the Parent requested and was provided a copy of the District's response. The Parent also provided OSPI with a signed release of records.

On December 15, 2023, OSPI requested the Complainant provided additional information, and the Complainant provided the requested information the same day. On December 22, 2023, OSPI provided the District with a copy of the same.

OSPI considered the information provided by the Complainant 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 October 31, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Beginning October 31, 2022¹, did the District follow proper reevaluation procedures, specifically, did the District follow proper procedures regarding whether a functional behavioral assessment needed to be completed?

¹ After the opening letters, dated October 30, 2023, OSPI further reviewed the Complainant's October 30, 2023 complaint request. The Complainant's complaint request made it clear the allegations related to the 2022–23 school year. For example, the complaint request read, in part, "During the...2022-2023 school year, the aforementioned violations occurred. Financial and emotional setbacks for the family, particularly

2. Beginning October 31, 2022, did the District follow proper individualized education program (IEP) development procedures, specifically, did the District follow proper procedures regarding whether:
 - a. The Student required a behavioral intervention plan?
 - b. The Student required 1:1 paraeducator support?
 - c. The Student required ABA therapy?
3. Beginning October 31, 2022, did the District follow proper progress reporting procedures?

LEGAL STANDARDS

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.

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.

Consideration of Special Factors: In developing, reviewing and revising each student's individualized education program (IEP), the team must: consider the use of positive behavioral interventions and supports and other strategies to address, in part, the student's behavior. 34 CFR §300.324; WAC 392-172A-03110(2).

between October – November 2022, February 2023, and April through June 2023, directly resulted from these issues.”

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

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

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

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

"There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time

than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

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).

FINDINGS OF FACT

Background Information: 2021–22 & 2022–23 School Years

1. At the start of the 2021–22 school year, the Student was not yet eligible for special education services. The Student was found eligible for special education services in May 2022.
2. The Student's IEP team developed an initial IEP for the Student on June 22, 2022. The June 2022 IEP provided the Student with the following specially designed instruction in a *general education setting* each week:
 - Emotional Regulation: approximately 6.5 hours (to be provided by a paraeducator)
 - Social Skills: approximately 6.5 hours (to be provided by a paraeducator)

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

- Emotional Regulation: 50 minutes (to be provided by a special education teacher)
- Social Skills: 50 minutes (to be provided by a special education teacher)

The June 2022 IEP provided the Student with the accommodation of breaks.

3. The 2022–23 school year began on September 7, 2022.
4. According to the Parent, "The month of October and November of 2022 we were receiving calls 1-3 days a week to pick up Student."
5. An October 18, 2022 prior written notice stated the Student's IEP team met that day to address new behaviors, such as eloping, screaming, swearing, and destruction of property. It read, in part:

Increase sensory options (theraband and foot tile). While using the foot tile and seated at desk, shoes are allowed to be off, but only then. The sensory room is an option during her

movement breaks with an adult when it is available. Use of headphones during loud times like recess and lunch are to be encouraged.

Add afternoon break.

Change WIN reading time to one-on-one [setting]...giving a condensed lesson, followed by time on Epic. Reduced demand schedule in the classroom where she completes some work and then is allowed to get on the computer. This will not be implemented until we can secure a staff member being available to teach and support this plan for at least one week.

Earning a fidget mid-day and a prize at the end of the day. Parent communication will be through [the] daily chart and [District staff] will email about Student's chart so she can be reinforced at home.

If/when Student chooses to leave the classroom unaccompanied, [District staff] will radio for assistance...It is important that only those familiar with Student's plan respond to the call and interact with her during these times. A communication will go out to the staff regarding this change. The responder will tell Student she isn't being safe and say 'warning 1.' If she doesn't turn and head back in the direction of her classroom after a few seconds then they will say, 'warning 2.' If they get to 'warning 3', parents will be called.

6. According to an email, the Student eloped from her classroom on October 22, 2022.
7. On October 28, 2022, the Parent requested via email that the District conduct a functional behavioral assessment (FBA).

Complaint Investigation Timeline Began: October 31, 2022

8. According to emails, in November 2022:
 - November 3: the Student participated in "SS with [the class for the] first time."
 - On one occasion on November 14, 2022, the Student refused to follow directions, threw her shoes, and eloped.
 - November 22: The special education teacher shared visuals related to the Student's "first/then chart." The special education teacher also instructed these staff members on how to properly permit the Student to engage in a "preferred activity."
 - November 30: District staff discussed "adding a small amount of OT consult to provide sensory strategies to help support coping skills when dysregulated."
9. According to the Parent, "We received the official diagnosis for [autism spectrum disorder] during December 2022 and when we started the new year I asked for [applied behavioral analysis (ABA)] services to help her in the classroom/school setting since the IEP team wanted to keep her in general education."
10. According to emails, in December 2022:
 - District staff discussed providing the Student with several new interventions, including, in part: theraband; foot tile; "use of headphones during loud times"; "afternoon break"; "reduced demand schedule...where she completes some work and then is allowed to get on the computer or classroom library time"; "earning a fidget midday and a prize at the end of the day"; and

"only those [staff] familiar with Student's plan [will] respond to the call [regarding an elopement by Student]"; and, Student would eat lunch in a quieter area.

- District staff used "visuals" to help the Student complete transitions. District staff also rewarded the Student with certain breaks if certain behavior was demonstrated.

11. According to emails, from December 2022 through February 2023, it was not unusual for the Student to experience the following: "safe day[s]"; full participation with the class; ability to complete transitions; ability to emotionally reset; and ability to emotionally regulate.

12. Two separate prior written notices, both dated December 6, 2022, read, in part:

Student demonstrates sensory processing differences that...adversely impact her...learning and result in work avoidance behaviors. Evaluation results indicate that she...requires services in OT consultation.

OT consultation will assist with problem-solving with the team on new behaviors seen in the school environment, including eloping, screaming, destruction of school property and work avoidance. Consultation will also include trialing sensory strategies when escalated to assist with calming and coping strategies.

13. A December 2022 assessment revision noted, in part:

Student has diagnoses of ADHD combined type. Student takes medication for her ADHD. During the 2021-2022 school year, she was typically able to regulate her emotions when medicated. However, Student has demonstrated an increase in dysregulation (screaming, swearing, destroying property), boundary pushing and work avoidance (most commonly eloping from the classroom) in the beginning parts of the 2022-2023 school year...A parental request for a sensory evaluation occurred on 10/25/2022.

...
Summary of Deliberations: Student is a kind, high-spirited, and innovative student who views the world in a cool and unique way. She enjoys moving her body and frequently jumps from one activity to another. Student is able to hyper-focus on her preferred activities, including read alouds and use of her Chromebook. Based on clinical observations, she appears to engage in sensory-seeking behaviors that lead to work avoidance when her preferred activity stops or a work demand is asked of her.

...
Trialing different sensory strategies may be a tool to assist with calming when dysregulated and increasing body organization and readiness for learning...She may have reduced body awareness and how to manage it when dysregulated, and may benefit from tools to bring awareness to interoception in order to increase self-understanding, self-regulation, health, well-being and social connection.

STRATEGIES: Below are strategies that have been previously trialed, may be in use or new strategies that may be helpful in increasing Student's availability for learning.

- In the 2021-2022 school year, Student benefited from alternative seating options in the classroom. She continues to benefit from alternative seating areas, including a large kidney bean table in the back of the classroom with a large ottoman that she can sit on.
- Clearly outlining expectations.
- Use of visuals. She is currently utilizing a first/then visual to earn time for a preferred break on Epic after completing a portion of academic work.
- Use of timers and chunking academic tasks.

- Increased opportunities for breaks. It may be beneficial to structure breaks, such as giving Student a job, providing heavy work opportunities or access to the sensory room, to ensure that her body is organized and ready to learn when returning to class rather than being amped up.
- Access to novel fidget items.
- Work on body awareness skills to identify how her body is feeling and to better access coping strategies in moments of Dysregulation.

14. With the December 2022 amended IEP, the following changes were made to the Student's IEP:
- The Supplementary Aid and Service of "OT Consultation" was added: 20 minutes 10 times a year (to be provided in a *general education setting*).
 - The following accommodations were added: access to sensory items and alternative seating options.
 - The following modifications were added: "visual aids for work completion, following classroom routines, and accessing coping strategies"; "break material into manageable parts"; and "reduce length of assignments."
15. On January 3, 2023, a general education teacher provided the OT with a "dragon fire breathing calm down tool" to use with the Student.
16. According to emails, in February 2023, District staff began tracking the Student's behaviors and/or emotional regulation abilities via a chart.
17. According to the Parent, "In February-April it went in waves where we would have a good week and then a stretch where it was 1-3 days a week [wherein we were asked to pick the Student up from school]. It was frequently enough that we had the discussion of [whether to] go...to a single family income."
18. The District's response included progress reporting, dated February 19–20, 2023, which related to the December 2022 amended IEP, and provided:
- Emotional Regulation (ability to self-regulate)**
 Sufficient Progress: Student has made immense growth this semester with generally adjusting to school life and expectations and that starts with her emotional regulation. She still requires a large amount of individual adult support during her day, but she manages her own emotions and behavior within that support. Whereas, she would have in the fall needed many reminders throughout the day to be safe, she is given sensory input and breaks, as well as space within the classroom that prevents her from escalating to a point where strategies and reminders are no longer helpful. Student's team is all so proud of her! We can't wait to see what 2nd semester has in store for Student!
- Social Skills 1 (ability to engage in class activities with responsible decision making)**
 Emerging Skill: Student's daily goal chart tracks when teachers observe her having a safe body, staying in her own space, and participating in class activities. This last goal is the most difficult still for Student, though she has shown growth since the beginning of the year when she was engaging in 1/7 opportunities, it is now 1/3 (or 33%). This is something to celebrate, and also we will continue to work during 2nd semester at getting closer to the 5/7 or 71% mark. One factor is the consistent use of the 'If, Then' Chart, which helps break down the expectation visually for Student so she will know what she can do immediately

after completing the class activity. One of her most preferred activities requires the internet and in this way, data in the last couple of weeks would be slightly impacted by our district-wide internet outage. Keep up the good work, Student, at doing your job at school everyday! We believe in you!

Social Skills 2 (ability to “problem solve and re-engage in expected activities, improving self-management)

Emerging Skill: While Student is making great strides this year, her self-management is not yet evident through data. She is learning which strategies work for her and how it feels to be in a zone where she can make the best decisions and be a part of the classroom, having successful social connections with peers, mostly with adult support still at this point. We will look toward more independence of management and re-engagement in 2nd semester as she prepares for second grade.

19. According to emails, in March 2023:

- March 6: The Student expressed frustration at her time with the special education teacher ending, would not listen to directives, and on at least one occasion, “yelled and kicked.” The special education teacher noted, “[Recently, there have been] quicker escalations that are happening more frequently [and] settings that are usually at least tolerable for her...are no longer tolerable without a one-on-one person.”
- March 8: The Student refused to participate in recess and “eloped from class”.
- Generally, the Student did not demonstrate emotional dysregulation between March 9 and 15 and March 21 and 24.
- March 16: The Student demonstrated significant emotional dysregulation when it was “announced to the class that it was time to clean up.”
- March 27: Student “hit [and] kick[ed]...during [a] classroom” activity.

20. According to emails, in April 2023:

- April 10: The Student transitioned smoothly between different activities.
- April 12: District staff identified a particular “contact” person, depending on the time of day, if Student “eloped or escalated.”
- April 19: The Student demonstrated yelling and throwing items. Following an incident of emotional dysregulation, the Student was able to reflect on the same and “apologize to the class.” Regarding this incident, the Parent stated, “Student’s been making big strides in self-regulation, but as was seen yesterday, there’s still work needing to be done.”
- April 18, 21 and between April 25 and 29: The Student generally had a good day, in terms of emotional regulation.
- April 24: The Student experienced a couple incidences of emotional dysregulation.

21. According to the Parent, at a May 2023 IEP meeting:

The statement from the principal [that the Student required a 1:1 paraeducator] was made during an IEP meeting when Parents had brought [our personal educational consultant] on board. [Additionally, the special education director was present]...The principal acknowledged Student needing the 1:1, but that they did not have the extra body to provide this. The director stepped in and said she would find someone and within 1-2 days she had someone to work with our child. Because this was a zoom meeting I do not have...documentation [reflecting the foregoing statements]. This was also the meeting

where the school counselor acknowledged their part in the delay of BCBA services which I had requested in the fall of 2022.

22. According to an email, on May 10, 2023, the Student experienced emotional dysregulation, but was able to reflect on the same, clean up her space, "get to the 'green zone' more quickly", and "share [an] apology reflection with the class."

23. May 2023 emails showed:

- Generally, the same pattern of emotional regulation as occurred in February through April 2023: the Student would have several days wherein she exhibited emotional regulation, followed by a day or two where she struggled more significantly with emotional regulation.
- A May 17, 2023 email thread detailed the following interventions as being provided to the Student: "covering Student's ear"; weighted blankets; fidgets; and "drawing materials and breathing visuals" for the breakroom.
- The Student experienced an emotional dysregulation on May 17, 2023.

24. On or about May 17, 2023, an occupational therapist worked with the Student's music teacher on "new strategies" for working with the Student.

25. An FBA was completed on May 30, 2023. The May 2023 FBA targeted the following: (Behavior 1) "screaming, hitting, kicking, spitting, throwing objects"; and (Behavior 2) "refuse to complete academic tasks that require written output." In part, the May 2023 FBA read:

Reading is an academic strength. Participation in small group (WIN time) has increased dramatically in the last month. Previous months sat near a nearby table and now she now sits with the group and participates. She is often engaged during read-alouds and videos...in class too. Decrease in elopement from classroom, taking shoes off, touching other students materials, hiding under teacher desk since start of the year. Walking safely with the class in line has increased so much since the start of the year. Student now asks peers politely 'Can I go in front?' when she wants to be near the teacher, and stands to the side of the line next to the teacher or joins the back of the line when rejoining class after recess.

...

February: 4 escalations (hitting, kicking, throwing objects, yelling).

...

March 2023: 2 escalations (hitting, kicking, screaming) at school and Kids Krew aftercare.

...

April 2023: 3 escalations (hitting, kicking, throwing objects, screaming).

...

May 2023: 6 escalations (screaming, hitting, kicking, climb on counter, throwing objects).

...

Contributing Factors: Diagnoses of Autism Spectrum Disorder and ADHD, which include significant delays in social-emotional skills, problem solving and impulse control, alongside sensory sensitivities (i.e., noise, textures). These difficulties interfere with Student's ability to engage in learning tasks, maintain attention on tasks and activities for an age-appropriate length of time, and interact with peers using age-appropriate social skills.

The May 2023 FBA recommended the following strategies to reduce the likelihood of behavior 1:

Designated break space outside classroom (green cushion), can use a signal to communicate with teacher. Visual schedule and supports available at desk.

Pre-teach coping strategies and how to access break space when deescalated.

Coping strategy practice, accessing the break space and communicating with teacher pre-taught outside of class when Student is calm. Uses modeling, role playing, repetition with coaching several times a week in multiple locations in the school and in the classroom.

Reinforcement for following plan, validation of feelings, praise, and welcome back to the learning space.

The May 2023 FBA recommended the following strategies to reduce the likelihood of behavior 2: "1:1 instruction on how to use established coping strategies at school...Modeling, role playing, repetition with 1:1 coaching several times a week in and out of the classroom... Maintain work completion expectations, allow Student to complete alternative work instead." (The behavior 2 strategies also included those strategies listed for behavior 1, above.)

26. According to emails, in June 2023:

- A behavioral incident took place on June 1, 2023. The principal wrote an email that read, in part, "[Multiple District staff] agreed that this escalation was different in that she appeared in control of her emotions and not in control of her body. She continues to struggle with appropriate response and social interactions when she feels a peer doesn't understand her."
- District staff utilized a "body scan mindfulness activity [with Student] that helped her move her body from yellow to green zones at school."
- A general education teacher expressed concern that PE had to be "evacuated...3 times in the last month" because of emotional dysregulation exhibited by the Student.
- The District assigned the Student an "extended expulsion" on or about June 7, 2023.
- The Student's schedule was changed upon her return on June 21, 2023.
- The Student returned to school on or about June 16, 2023.
- June 21: The Student experienced multiple episodes of emotional dysregulation.
- June 24: The Student was not emotionally dysregulated, but refused to engage in academic work.

27. On or about June 5 and 7, 2023, the Student's IEP team developed a new IEP and a behavioral intervention plan (BIP) for the Student. Functionally, the June 2023 BIP was an incorporation of the May 2023 FBA.

The June 2023 IEP included, in part, the following accommodations: "tangible reward system to motivate good behavior"; "ability to choose a partner or opt to work individually"; "access to an alternative location for large, unstructured times"; "access to sensory items"; "access individually or in small group to reduce distractions"; "dismissal from class 2 minutes early with an adult to reduce sensory triggers"; "extended time"; "opt out option for competitive games"; "positive praise to reinforce good behavior"; and "warnings for a change in noise level."

The June 2023 IEP provided the Student with 15 minutes 1 time a week of OT Consultation as a Supplementary Aid and Service.

28. A June 6, 2023 prior written notice read, in part:

Data from [FBA] indicates that Student requires a [BIP]...1:1 paraeducator support was recommended. IEP team agreed and [director] indicated that a 1:1 aide would be provided for a 6 week trial period at the beginning of the 2023/2024 school year, and if successful as determined by the IEP team, would be extended beyond that [time period].

...

Team proposes that Student return to school on a reduced demand schedule, with 1:1 paraeducator support, in an alternative setting near her classroom, beginning 6/12.

...

Student's behavior in this incident was determined to have a direct and substantial relationship to her disability.

...

Student has significant difficulty managing her emotions at school.

29. An emergency response protocol was created for the Student on June 14, 2023. It read, in part:

Goals:

1. To follow directions from supervisory adults
2. To have safe interactions with students and adults
3. To seek out adult support and break if feeling frustrated

Concerns:

1. Escalations that include unsafe physical behaviors such as climbing on furniture, throwing objects, and physical aggression toward peers and adults.
2. Defiance and resistant to adult direction.
3. Limited ability to control her actions when escalated. During these times, there is a pronounced increase in non-compliance and power struggle with adults, disruption, being out of the assigned area, screaming, aggression, and property destruction.

Proactive Interventions:

The goal of the following interventions is to reduce safety concerns for students, staff, and Student. Further, the goal is to decrease behaviors that have resulted in Student being suspended from school, or being removed from the educational environment. This will be accomplished by:

- 1) Increasing line of sight supervision of Student by...staff
 - Designated supervisors
 - Framing directions using positive language
- 2) Provide school support services when social problem solving is needed. Ensure adequate support is available to assist if necessary: Counselor, Nurse, Case Manager, SINC, Principal.
- 3) Reducing situations where Student's physical safety is more difficult to ensure.
- 4) Providing an alternative space to deescalate i.e., sensory room or other appropriate space.

Before school: Student will not line up with the class. She will come into the building through the front office.

- **Lunch/Recess:** Alternate lunch and recess space with designated supervisor.
- **Classroom seating:** Student will have preferential seating in the classroom, which will be determined by the classroom teacher.

Specify any special precautions that must be taken in case of an escalation and need for restraint or isolation:

- If/when Student is escalated for 30 minutes or more, the family will be called.
- The response team will attempt to verbally deescalate first, following the Behavior Intervention Plan.
- If de-escalation is unsuccessful, the team will move Student to the sensory room, or other location, for her safety and the safety of others.

Summer 2023

30. A June 28, 2023 prior written notice stated a request for a compensatory education “summer camp” was being denied because “the special education full-day summer programming can meet Student’s needs.”

31. A “Summer 2023 Notes” document read, in part:

Her behavior has changed significantly recently. The team will put her in separate room with 1:1 para. The team will bring her to the classroom for activities for short amount of time and slowly increase the minutes. Since behavior just changed and increased these days, the team doesn't have a lot of information or plan for her yet.

According to this document:

- In part, the following interventions were provided to the Student: environmental rearrangement; clear expectations; timer use for transitions; paraeducator support; and offering choices.
- The Student demonstrated “concerning” and/or “challenging” behaviors on no less than 2 days of summer school. (Upon knowledge and belief, the “Summer 2023 Notes” document was incomplete, it did not include entries for each day of 2023 summer school.)
- It is clear the service provider team analyzed the Student’s behavioral occurrences in relation to the recently completed BIP.

32. On August 31, 2023, the Parent emailed the special education director, stating, in part: [Will] the school district would consider compensation for the services we have obtained with [private consultant]? We reached out to her last year when the escalations and lack of support from the care team were financially affecting our income due to the frequency we were being asked to pick Student up from school.

After obtaining her assistance we learned that the [delayed implementation] of a BIP, and subsequent ABA services played a factor into the frequency of these escalations. Also, the acknowledgement of [the] principle [sic]...that she should have had a one on one PARA, but was not given one due to not having a person available.

...

I feel like with the addition of ABA [in summer 2023], one on one para support and ESY we are seeing improvements with her. We are beyond grateful for your support that you have provided and are more optimistic moving into this school year.

33. According to the Parent:

ABA services were provided during the summer by the school district. This was after we had already started the process working with a private group since the school had been

denying my child services after we requested them...The ABA services in the summer school setting was supposed to work on Student's work avoidance and help her establish more structure so she could be successful in the general education classroom. I've asked for the documentation of what the program looked like since my child's account of the program consists of Youtube videos and movies that we had not approved to be viewed...I was never provided the materials or BCBA notes from the school as they've stated they used a third party group for the summer and were having difficulty contacting them.

2023–24 School Year

34. The 2023–24 school year began on September 6, 2023. The Student continued to be eligible for special education services.
35. According to the Parent, The Student "continued struggle with the day-to-day flow [during] the fall [of] 2023."
36. According to emails, in September 2023:
- The band room was used as the Student's break space.
 - District staff used a "body scanner" emotional regulation exercise with the Student.
 - District staff placed "sensory items" in "the big room," for the Student to use during breaks.
 - On September 22, 2023, the BCBA discussed the parent needing to sign a "consent to receive BCBA consultation" form.
 - September 26: The Student experienced three escalations "that were notable in length."
 - September 27: The Student "kicked and broke a window." The special education teacher noted "Student [was] making her goal lately, even while being escalated most of the morning." Also, a BCBA began to gather information on the Student's needs, in preparation of giving service providers advice on how to address the Student's behavioral needs.
 - District staff used social stories to help the Student emotionally regulate.
 - Generally, the Student had a good day—behaviorally—on September 28 and 29, 2023.
37. A September 21, 2023 prior written notice read, in part, "The IEP team determined that Student will benefit from adding a 1:1 paraeducator to her IEP through the rest of the year. The reason we are proposing or refusing to take action is because she is having success with this level of support."
38. On September 25, 2023, a BCBA began providing consultations related to the Student. According to a "BCBA Consultation Notes" document, in fall 2023, the BCBA conducted approximately 11 consultations in fall 2023 and it appeared the principal purpose of the BCBA was to assist the service provider team in implementing the BIP and/or tracking behavioral data, etc., as opposed to the BCBA working directly with the Student.
- A related "consultation notes" document read, in part, "When triggered by not receiving a requested item or privilege, she will throw items, kick, spit, hit, scratch, scream, scratch and bite self, bite hard objects, pull hair, talk about killing people."
39. In late September 2023, the Parent was invited to an IEP meeting scheduled for October 6, 2023. The purpose of said meeting was to "discuss adding 1:1 to [the Student's] IEP."

40. According to emails, in October 2023:

- Behaviorally, the Student had a good week the week of October 2, 2023.
- October 9: The BCBA consulted with District staff regarding de-escalation strategies for the Student. Said strategies included, in part: redirection; taking breaks; and helping the Student process and articulate her emotions.
- The Student experienced a relatively minor escalation, related to a transition, on October 10, 2023. Overall, though, the special education teacher stated it was "another good day."
- A new one-to-one for the Student started on October 17, 2023.
- October 18: The Student experienced "one of the more difficult days that she has had for some time." On this day, the Student got "overstimulated in PE," she got "thrown off her routine" by a classmate who did not "follow expectations," she got an "accidental injury," and she got impatient waiting for her time with the occupational therapist.
- October 19: The Student escalated when "a friend drew something on her art that Student had told her not to," and also when some specific break-related requests the Student made could not be honored.
- Behaviorally, the Student had a good day on October 23 and 25, 2023.
- October 24: The Student had "three low-to-mid-level escalations, but luckily never went through an entire escalation cycle."

41. According to the BCBA's October 2, 2023 notes, generally, the Student had a positive day, but did demonstrate some occasional school/command refusal. These notes, in part, showed the Student enjoyed reading and was generally comfortable with taking a break, as a behavioral regulation strategy.

42. A behavioral occurrence took place on October 3, 2023. According to an email:

Para reported she was being 'attacked' and Student was pursuing the para with hands up to scratch her. They then went to the community room (not normal break spaces). Trigger was transition back to class. Given choices of expected break spaces. Was distracted by a trinket, she put on her shoes, and then she turned to the left and went to PE door. She kicked a window and it shattered the glass. They then went to the big room.

...

New curriculum: Interoception is a curriculum written by an OT. She is really interested in this curriculum to notice body signal, to an emotion/feeling, and then choose something to regulate. They are phrased like science experiments.

...

Strengths: Student likes to read and take breaks with reading in class. She also seems to have great imaginative play skills. She enjoys talking to adults about preferred topics like Harry Potter or other books she is reading.

Positive / progress made: Some safer days since sub para has been position unfilled.

The BCBA's notes for October 3, 2023 read, in part:

Triggers: Transitions back to class from a break, directions, something unexpected, not getting a preferred location/item/situation, being asked to clean up

Skills: communicating a need, following break plan.

Interventions in place: Use of a point chart to earn a reward, use of scheduled break, timer to indicate transitions, holding boundaries on expected break options, giving clear options

and not negotiating. (Repeating the expectation calmly and kindly works well), can only have 1 stuffed animal from home as she can become possessive of them, great tier 1 interventions in place with general education teacher. There are great interventions in place included a visual schedule/ behavior, timer for transition, giving choices for break, giving positive feedback on chart throughout the day, coach/prompt communication (i.e., just ask, use your words, ask permission, and doing jumping jacks and scissor kicks often in class to get out her energy, unprompted.

43. According to an October 5, 2023 prior written notice, the Parent requested the District reimburse her for certain monies spent on an educational advocate, and the District refused, stating, "The services outlined in the IEP are provided by district staff."

44. The BCBA's October 6, 2023 notes read, in part:

During PE Student participated for a time and then was triggered when PE teacher corrected her and her peer group. She left her group, sat on the side, threw her shoes off and requested break. However, she did not leave. We prompted her to choose a place but did not leave until her class left.

Positive comment/ progress made: Is using her words to self-advocate, asking for break and trips to bathroom. Staying safe and taking reading breaks in the classroom.

Coached on:

Para: I reviewed the datasheet and the rubric for scoring the IEP goals.

Para: We talked about strategies for prompting communication and for engaging in learning when she is choosing to read instead of participate.

45. According to BCBA notes, on October 9, 2023:

- At various times during the school day, the Student threw blocks and had difficulty with transitions.
- The BCBA and the substitute paraeducator worked on various de-escalation strategies with the Student, including post-event reflection; presenting the Student with different choices in terms of activities to complete; and providing the Student with breaks.
- The BCBA noted, "The [data] graph for [the amount of times Student demonstrated] safe body has dramatically increased since the change in paraeducator."

46. On October 17, 2023 the BCBA worked with the newly hired paraeducator. In part, they discussed: the difference between "breaks" and "reward time"; use of a "first/then board"; the correct "verbiage" to use regarding the breaks; and how to properly record data.

47. The BCBA's October 25, 2023 notes read, in part:

I worked with the paraeducator on data collection (to ensure we are getting accurate information on her progress), minimizing directions as mentioned above, and on recognizing early signs of dysregulation.

...

Finally we reviewed the definitions on Student's daily behavior chart. After talking to the paraeducator and the special education teacher, we decided that we needed clearer definitions on each of the expectations.

...

Student was able to stay safe today by taking breaks. It was successful when the paraeducator gave her more space in the classroom and to allow her more independence. The paraeducator is doing a great job at honor her requests for breaks and building rapport with her on break times.

48. The BCBA's November 1, 2023 notes read, in part:

Today Student had a great day until about 1PM. During this time she wanted to be with the psychologist and escalated when not able to be with him. I spoke to the psychologist about the idea of making more clear rules or indications when he is available for a quick visit vs. unavailable.

Positive comment/ progress made: Student is developing a really positive relationship with the paraeducator and is communicating really with her! Student has shown safer behavior overall and, though still taking many breaks, is staying safe which is our first priority.

[I] coached on addressing refusals, toileting, and first/then board.

...

Data Summary: Student has been safe most days since paraeducator has started except for last week on the 24th.

Data-based decision: We think that Student might be ready for a change in the near future. Today we are going to work on introducing a new visual to demonstrate when Student is able to take a break. This is an attempt to reinforce new boundary with her—where we ask her to pause before taking a break and to complete one small expectation. In this case, we expect her to stay in class for 5 minutes.

49. According to emails, in November 2023:

- Behaviorally, the Student had a good day on November 1 and 8, 2023.
- The BCBA worked with the Student on November 1, 2023. Overall, the Student had a good day, behaviorally, but did become dysregulated when the Student requested to see a particular staff person and that individual was not available. The Student utilized a break area to emotionally regulate. The BCBA provided input to staff regarding the first/then board, toileting procedures, and "addressing [the Student's] refusals."
- November 2: The BCBA provided input to District staff regarding the first/then board.
- November 6: "Difficult day"; the special education teacher noted, in part, "I believe the antecedent was Student asking for a break, and the adult with her telling her she needed to go back to class to work first."
- District staff used an "if/then chart" with the Student.

50. On November 6, 2023, the BCBA observed that the Student had three behavioral escalations. Supports provided included, in part: reminders; breaks; first/then boards; and giving the Student space. The Student threw items and growled. It is clear the BCBA observed the Student's behavior in terms of the Student's spring 2023 BIP.

51. The District's response included numerous examples of visual images related to assisting the Student transition between activities.

CONCLUSIONS

Issues 1 & 2: Response to the Student’s Changing Behavioral Needs – The Parent alleged that beginning October 31, 2022, the District did not follow proper procedures for responding to the Student’s changing behavioral needs resulting from the Student’s disability.

Generally speaking, an IEP team’s decisions must be based on a student’s needs resulting from that student’s disability. 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. An IEP team must also be responsive to any change in need resulting from a student’s disability. 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; and 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. In developing IEP services for a student that has behavioral needs, an IEP team should consider the use of positive behavioral interventions and supports.

Here, between October and December 2022, the District was responsive—both timely and substantively—to the Student’s changing behavioral needs resulting from the Student’s disability. For example, on October 18, 2022, the Student’s IEP team met to address new behaviors, such as eloping, screaming, swearing, and destruction of property. In response, the IEP team began providing the Student with several new interventions, as detailed in the October 18, 2022 prior written notice. When the Student continued to demonstrate challenges with emotional dysregulation in November and December 2022, the District’s evaluation group completed a sensory evaluation of the Student, and the Student’s IEP team made several amendments to the June 2022 IEP. For example, in December 2022, the IEP team added OT consultation as a supplementary aid and service, added no less than two accommodations, and added several modifications. Again, between October and December 2022, the District was responsive to the Student’s changing behavioral needs.

Between December 2022 and May 2023, the Student’s challenges with emotional dysregulation did not dissipate, nor was the frequency of the Student’s emotional dysregulations necessarily reduced by the December 2022 interventions; rather, the Student’s emotional dysregulation challenges continued from December 2022 through May 2023. In part, the Parent stated the Student first received an autism spectrum diagnosis in December 2022: in February 2023, District staff determined the Student’s emotional dysregulation challenges were so significant that they began tracking the same via a data chart; according to the Parent, between February and April 2023, it was not uncommon for the District to ask the Parent to pick the Student up from school early a couple times each week²; mid-February 2023 progress reporting showed the Student had made little progress on the social skills IEP goals; and according to March 2023 emails, the Student

² OSPI notes, IDEA disciplinary procedures would apply to any such removals.

demonstrated emotional dysregulation no less than six times. A March 6, 2023 email by the special education teacher is particularly instructive, “[Recently, there have been] quicker escalations that are happening more frequently.” Given the foregoing data, OSPI determines it would have been appropriate for the District’s evaluation group to consider conducting an FBA of the Student on or about late March 2023.

An FBA focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations.

If the District had obtained consent to conduct an FBA in late March 2023, and then completed an FBA within 35 school days of the date consent was obtained, an FBA would have been completed by approximately late May 2023.³ Here, that is exactly what happened: an FBA was completed on May 30, 2023. So, as of late May 2023, the District followed proper IDEA procedures in responding to the Student’s behavioral needs.

Once the FBA was completed in late May 2023, the Student’s IEP team took several steps, in fairly rapid succession, to address the Student’s continued need in the area of emotional dysregulation. For example, in early June 2023, it developed a new IEP for the Student⁴, a BIP⁵, and an emergency response protocol. When the Student continued to demonstrate challenges with emotional dysregulation in late June 2023, the District provided the Student, in part, with ESY during summer 2023, which included some form of ABA intervention, and beginning with the 2023–24 school year, a 1:1 paraeducator and a BCBA consultant.

³ An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311, to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents’ consent and complete the FBA within 35 school days after the district received consent.

⁴ In part, the June 2023 IEP included new goals for the Student and new accommodations.

⁵ A behavioral intervention plan is a plan incorporated into a student’s IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student’s learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student’s learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student’s school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

Based on the documentation provided to OSPI by both parties during this investigation, the District undertook timely responses to the Student's need in emotional dysregulation, in relation to an FBA, BIP, 1:1 paraeducator support, and BCBA consultations, from October 2022 through the present. OSPI does not find a violation.

Issue 3: Progress Reporting – The Parent alleged the District did not follow proper progress reporting procedures from October 31, 2022 through the present.

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, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards.

Here, the June 2022 IEP, December 2022 amended IEP, and June 2023 IEP each stated progress on goals was to be reported each semester, by providing the Parent a copy of the "goal page."

The fall 2022 semester ended on January 27, 2023. The District's response included detailed progress reporting on the June 2022 IEP goals,⁶ dated February 19–20, 2023. While said progress reporting was completed several weeks after when it should have been completed, this does not represent a material failure to implement the IEP. No IDEA violation is found on this score.

The spring 2023 semester ended on June 26, 2023. The District's response did not include progress reporting for this time period. A new annual IEP for the Student was created in June 2023. But, while it contained general information on the Student's emotional regulation and social skills needs, it did not include information specific to the June 2022 IEP goals. This, then, represents a material failure to implement the progress reporting portion of the June 2022 IEP, and a violation of the IDEA. As a remedy, the District will be required to provide OSPI with documentation showing it provided the Parent a copy of progress reporting at the end of the fall 2022 semester, on or about January 26, 2024.

CORRECTIVE ACTION

By or before **February 2, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Submission of Progress Report

By or before **February 2, 2024**, the District must provide OSPI with documentation showing it provided the Parent a copy of the Student's first semester progress report.

⁶ The December 2022 amended IEP did not change the goals in the June 2022 IEP.

DISTRICT SPECIFIC:

None.

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 27th day of December, 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.)