

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-57

PROCEDURAL HISTORY

On April 18, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from a non-profit educational advocacy organization (Complainant) related to a student (Student) attending the [REDACTED] School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 19, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 5, 2023, OSPI received the District's response to the complaint and forwarded it to the Complainant on May 9, 2023. OSPI invited the Complainant to reply.

On May 22, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on May 23, 2023.

On June 2, 2023, the OSPI complaint investigator conducted interviews with the Complainant.

On June 4, 2023, the OSPI complaint investigator conducted interviews with the District.

OSPI considered all information provided by the Complainant and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 19, 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. Whether the District followed appropriate procedures to determine the Student's placement and/or change placement since April 19, 2022 and for the 2022–2023 school year?
2. Whether the District updated the Student's functional behavioral assessment (FBA) as requested and developed an appropriate behavior intervention plan (BIP)?
3. Whether the District implemented the Student's individualized educational program (IEP) since April 19, 2022, including but not limited to specially designed instruction, transportation, and 1:1 paraeducator support?
4. Whether the District appropriately responded to requests to schedule IEP meetings?

5. Whether the District appropriately responded to requests to access the Student's records per WAC 392-172A-05190?

LEGAL STANDARDS

Change of Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's individualized education program (IEP) has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

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

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

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 Instruction: Home/hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section. WAC 392-172A-02100.

Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's IEP. Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness. WAC 392-172A-02100.

A student eligible for special education who qualifies for home/hospital instruction must continue to receive educational services that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. The IEP team determines the appropriate services. WAC 392-172A-02100. Home/hospital services include instruction and tutoring for general education classes. If a student usually attends both general education and special education classes, they may qualify to receive both special education services in a homebound placement and home/hospital services for their general education classes. *Home/Hospital Services Guidelines* (OSPI, 2022).

Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP): In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). An FBA and BIP must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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. *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).

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. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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. 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Requests for IEP Meetings: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Access Rights to Student Records: Districts must permit the parents or guardians of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review

educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

Disciplinary Removals: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. When a district removes a student eligible for special education from school for a stated period of time, but does not characterize that removal as a "suspension," it must be determined whether that action was in fact a disciplinary one (that is, used as a form of corrective action or punishment). WAC 392-400-205(1) (defining "discipline"). It must also be determined whether the removal resulted in a change of that student's educational placement. 34 CFR §300.530; WAC 392-172A-05145.

Disciplinary Removal that Results in a Change of Educational Placement: A change in placement occurs when a student is removed from his or her current placement because of discipline for more than ten consecutive days, or when the student is subjected to a series of removals that constitute a pattern because the removals total more than ten school days in a school year, because the student's behavior is substantially similar to the previous incidents that resulted in removals, and because of additional factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another. 34 CFR §300.536; WAC 392-172A-05155. After a student has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement under WAC 392-172A-05155, the student's IEP team determines appropriate educational services to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. WAC 392-172A-05145.

Manifestation Determination: Within ten school days of the district's decision to change the student's placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student's disability. In making the manifestation determination, the district, parents and other relevant members of the IEP team must consider all relevant information in the student's file to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or if the conduct in question was the direct result of the school district's failure to properly implement the student's IEP or behavior intervention plan. 34 CFR §300.530(e); WAC 392-172A-05146.

FINDINGS OF FACT

Background

1. The Student had been enrolled in the District since kindergarten and was eligible for numerous supports and services from the state related to foster care placements, among other family needs.
2. The Student is eligible for special education services under the category of emotional behavioral disability and had an IEP from October of 2020. The October 2020 IEP noted that the Student had behavioral needs and that the District would conduct a functional behavioral assessment (FBA) to help address his behavioral challenges at school. The 2020 IEP also showed that the Student had violent behaviors, which resulted in 2:1 paraeducator support in the special education classroom and shortened school days.

2021–2022 School Year

3. The District provided transportation to the Student during the 2021–2022 school year.
4. On September 29, 2021, the Student’s IEP team convened to develop his annual IEP, effective through October 4, 2022 (October 2021 IEP).

The October 2021 IEP noted the Student had behavior that impeded his learning and the team also created a behavioral intervention plan (BIP). The BIP included areas of focus related to the Student’s off-task behaviors and inappropriate tone of voice and included the target behavior of emotional regulation. The behavior section of the IEP stated that the Student:

...can show high levels of anger and frustration at times and has difficulty controlling outbursts of emotion. Triggers are most related to emotional trauma, not getting enough sleep, reactions to medication, learning new material, feeling loss of control and demands not being met. When feeling frustrated, overwhelmed or on sensory overload Student may show intense behaviors beginning with growling, followed by yelling, throwing objects/furniture, threatening, and at times physically harming others. Student knows many self-regulation strategies, however, in the moment of frustration or anger struggles to apply them...The data provided indicates that roughly 50% of the time Student is feeling ok, calm, and ready to learn and 50% of the time Student is expressing stress, worry, loss of control, anger, yelling or explosive.

The October 2021 IEP showed that the Student’s behavior was improving from the start of the school year and that he had made significant academic improvements. The IEP also stated that the Student has anxiety about academics and making academic mistakes.

The IEP noted that as of September 2021, the Student “had attended music, recess, math, and PE with his general education peers.” The general education teacher’s comments indicate that the Student “...is giving his best to participate with his peers. Additional time with his General Education class will be added as his willingness to attend and behavior improve.” The adverse impact summary section of this IEP noted that the Student “continues to require extra support

due to safety concerns.” The social emotional portion of the IEP noted the Student “...has strong desires to be accepted by peers and to have friends” and that “while he craves the strong social connection, Student has some challenges when interacting with peers...”

The IEP included goals in social/emotional (interacting with peers in an appropriate manner, maintaining personal space and appropriate tone of voice, word choice), reading, writing, math, communication (respectful communication), and self-regulation.

The October 2021 IEP provided accommodations for the Student to be offered in both the general and special education classroom. The October 2021 IEP provided the Student with the following specially designed instruction (SDI):

- Social emotional: 60 minutes, 5 times per week;
- Adaptive: 60 minutes, 5 times per week;
- Adaptive: 10 minutes, 3 times per week;
- Reading: 30 minutes, 5 times per week;
- Written expression: 15 minutes, 3 times per week;
- Math: 30 minutes, 5 times per week; and,
- Social emotional: 45 minutes, 5 times per week.

The Student received 1:1 paraeducator support for 360 minutes/5 times weekly as a related service.

The October 2021 IEP noted the Student would be in school for 1,845 minutes per week, and in general education classes for 47.15% of the day. The October 2021 IEP showed the team considered the following placements for the Student: 80–100% regular class, 40–79% regular class, and 0–39% regular class. The placement that was selected was the 40–79% in a regular class. The explanation for this selection says the Student will receive special education in the special education classroom and “will participate in all academic and extracurricular activities with non-disabled peers to the fullest extent possible except when receiving special education services in an alternate location. As Student’s behavior improves increased time with general education peers will be added.”

5. The Student was removed from school via an emergency expulsion and given online instruction in lieu of an in-person instruction beginning on or around April 14, 2022.
6. During interviews with the OSPI complaint investigator, both the Complainant and the District agreed that the Student displayed escalated behaviors at school in April of 2022, particularly on or around April 14, 2022, shortly after his bus commute to school that morning.

Complaint Timeline Began April 19, 2022

7. A prior written notice (PWN), dated April 19, 2022, stated that the District proposed to change the Student’s IEP. The PWN noted that the IEP team met on April 19, 2022, to discuss the best services and supports for the Student after the Student was emergency expelled on April 14, 2022, due to “high escalations and unsafe behavior.”

The proposed action noted on the PWN was to "...set up home hospital for Student to maintain access to his education and special education services. This will include Google classroom and a 30-minute Google Meet on school days to continue the Student's academic instruction and specially designed instruction services." This PWN also noted that the team proposed a psychiatric evaluation, a review of the Student's medications, and a safety plan for the Student and his mother.

8. The April 2022 IEP showed an amendment was made to the annual IEP.

The general education teacher's notes stated the Student's behaviors escalated in class from January–April 2022. The general education teacher shared that the Student was growling at people and saying things like, "Don't make me kill you." The general education teacher stated that the Student was slamming his fist on desks, telling people to shut up, slamming desks on the floor, destroying property, shoving furniture onto other students, putting hands on others, and throwing materials. The general education teacher also shared that this behavior was impacting the Student's learning and the learning of others. The Parent shared concerns that the Student's behavior issues were also increasing at home. The present levels section of the April 2022 IEP was updated to show the increase in the Student's escalations.

The IEP notes stated in relevant part that:

Beginning January 2022 to April 2022, we have seen a continual rise in escalations from Student. These behaviors have resulted in Student being emergency expelled from school due to unsafe behaviors including physically harming several adults and three police officers. Student's backpack has been searched daily from March to April 2022 due to bringing pocketknives, play guns, and matches to school. Behaviors we have seen rise over the months include the following:

...

April 2022

...Student struggled to communicate appropriately (yelling, growling, threatening) using an aggressive tone and volume. On two occasions, Student had his hands on another student with an intent to harm. Behavior is evident in the classroom, on the school bus, throughout the school environment, and at recess.

On April 14, 2022 Student was escalated on the school bus. A teacher was called out to meet the bus...Student grew impatient waiting to enter the building. Student got into the face of the teacher and started yelling. This behavior continued to the point of the Student threatening to harm staff. Staff were able to deescalate the student and get him into the building. Given time to have breakfast and return to baseline, at the recovery stage, Student went to his general education class. He was quick to frustration, to the level of screaming throughout the morning. During recess on the playground, a teacher observed Student putting his hands on another student. The staff member went to talk to Student to intervene...The Student was highly escalated and screaming at the adults. Student was calmly asked to give space. Student was given an opportunity to explain his side of the situation but refused to talk, only to scream. Student made several threats to staff. Staff encouraged Student to walk to leave the playground, and the principal arrived. Student threatened the principal followed by grabbing her sweater and punching her in the chest. The teacher and staff put the Student in a two-person Right Response hold. Student hit

and bit both staff members...he began walking into the school. Once in the school, Student began to escalate again kicking, screaming, and punching staff. Staff attempted to shut the Student into the quiet room, and the Student repeatedly punched the teacher, who was wedged between the door to the quiet room and the Student...the police were called...Student continued escalating assaulting three officers...Student was taken into police custody. The police officers carried him out of the school. The Student injured the officers...The notes state that the Student was taken to a juvenile detention center for one night.

The April 2022 IEP stated that the IEP team met with the state Department of Children Youth and Family Services (DCYF), social services, the Parent, a behavioral health provider, guardian ad litem, and behavior resource services on April 15, 2022. The team discussed the Student's release to the Parent. The IEP notes stated that different levels of care were discussed and presented, and stated that, "The School District assigned Student to Home Hospital with the consent and input of all those in attendance."

The present levels section of the April 2022 IEP included notes from the 2020–2021 school year, which stated that "Online learning was not successful for Student. During this time, Student had some reactions to medications and no academic or behavioral assignments were completed."

The only additional accommodation or special education service added to the April 2022 IEP was 20 minutes of occupational therapy (OT) consultation, one time per month. The other services and accommodations remain unchanged from the October 2021 IEP.

The placement section of the April 2022 IEP showed that the team considered the following placement options: 80–100% general education, 40–79% general education, 0–39% general education, and homebound hospital, with homebound hospital as the selected placement. The explanation of the selected placement stated that, "Student's behavior has escalated at school such that all academics and specially designed instruction will be received via Home Hospital."

9. During interviews with the Complainant, they stated that they never agreed to the home hospital instruction, and they reported that they believed the Student needed time with peers and an updated BIP and FBA, as opposed to this restrictive placement.
10. The District received a letter from the Student's health care provider, dated April 22, 2022, stating the Student would begin taking a new medication to help manage his mental health conditions and symptoms of extreme anger, poor focus, poor impulse control, and low frustration tolerance. The letter stated the Student met the criteria for a conduct disorder. The letter also included a request for home hospital instruction for a 12-week period beginning on April 25, 2022, to accommodate the Student's conduct disorder and post-traumatic stress disorder (PTSD). The request for home/hospital services form is also dated April 22, 2022.
11. The Student began receiving instruction via home hospital services around April 25, 2022.

The home hospital instruction consisted of Google classroom: 30 minutes of Google meet on school days to continue academic instruction and specially designing instruction that was posted online weekly. The District also added an OT consultation for the Student, to address his sensory processing needs, which was noted in a PWN dated April 19, 2022.

12. The Student received instruction at home through the end of the 2021–2022 school year. The District’s 2021–2022 school year ended on June 15, 2022.

Summer 2022

13. On or about June 25, 2022, the Student began to receive in-home therapeutic services from a state wraparound service provider, which included multiple peer support visits each week. The wraparound provider reported to the District and caseworkers that the Student did well with peers in social settings, such as the community playground and park.
14. The Complainant reported that they had concerns about the Student’s online instruction over the summer and its continuation into the new school year, so they emailed the District, in order to convene the Student’s annual IEP meeting prior to the start of the new school year. The goal was to discuss his placement and services, and attempt to resume the Student’s in-person instruction. However, the District was not able to meet in August.
15. On August 15, 2022, an email showed that the District informed the IEP team it believed that it would be best to wait until after the Student’s upcoming dependency hearing, to discuss his academic plan for the next school year. The Student’s attorney responded that he would receive a competency evaluation from a hospital, prior to the hearing, that could be reviewed by the IEP team.
16. On August 23, 2022, the Student’s advocate emailed the District and requested information on how to request his educational records. The District responded by email on the same day, stating that a formal request was needed, and the advocate said that she would send the formal request soon. The formal request for records was sent back to the District on August 29, 2022.

2022–2023 School Year

17. The District’s 2022–2023 school year began on September 1, 2022.
18. At the start of the 2022–2023 school year, the Student continued to be eligible for special education services, was in the sixth grade, attended a District elementary school, and their April 2022 amended IEP was in effect.
19. The Student’s IEP team met on September 1, 2022, to discuss the Student’s educational plan for the school year.
20. A PWN, dated September 1, 2022, stated that the District proposed to continue the Student’s IEP services. The PWN stated that based on prior in-school escalations, that staff had safety

concerns about the Student returning to school. The PWN noted that the team met to collaborate on a plan for the Student, that there was an upcoming court date pending, and an evaluation pending for the Student.

The PWN also stated that a concern about a lack of social experiences was brought up, and that to address this concern, the team agreed the Student would receive instruction online through an online District school, and attend in-person instruction for PE, music, and lunch, with the possibility of "increasing time in the future as [the Student's] stamina increases." The IEP team assigned the Student to work on his online classes in a room in a District high school building, where he could work on general academics and IEP goals with the assistance of a paraeducator and a case aide from his wraparound service provider. The team also noted that the online platform could track the Student's progress and stated that they would increase his time at school "as his stamina increased."

21. The IEP team meeting notes and related documents for the September 1, 2022 meeting do not show any disability related needs related to or impacting the Student's stamina or any medical recommendations for a shortened school day.

However, the District reported that they believed that due to the Student's post-traumatic stress disorder and other disability related needs, social settings in school were triggers for the Student's behavioral issues.

22. The Student's BIP was not reviewed or revised during the September 1, 2022 IEP meeting.
23. On September 6, 2022, according to notes from the wraparound service provider supporting the Student, the service provider reached out to the District for assistance with the Student's login information, in order to access the online instructional program. The notes show that the wraparound service provider made many attempts to get this information from the District over the next few days, and then met with the District on September 12, 2022, to gain the information needed for the Student to login to access the online instruction.
24. On September 16, 2022, the wraparound service provider met with the school principal, a teacher from the school, and the school's special education case manager to discuss opportunities for in-person learning, peer engagement, and tutoring. The notes indicated that a tentative plan was developed for the Student, to be implemented as of September 19, 2022.
25. On September 20, 2022, notes show the wraparound service provider attempted to access tutoring for the Student, but the District said they only had tutoring programs for grades 7–12.
26. On September 23, 2022, the Student's DCYF social worker (social worker) requested a time to meet to update the Student's IEP, noting that this meeting was discussed during the prior school year. The District replied the same day, and stated that the Student's IEP case manager was working to schedule the IEP meeting.

27. On September 26, 2022, the Student's foster care case manager inquired about the date for the IEP team meeting and added the state foster care educational ombuds person to the email conversation. The District responded that they would send invites for an IEP meeting, to be held on October 3, 2022. The Student's educational advocate (advocate) wrote back and stated that the current IEP says the team should meet on or before September 29, 2022. The advocate asked the District if they were requesting an extension for the annual IEP team review.

The District responded to the advocate's email and offered to convene the IEP team on September 29, 2022.

28. On September 27, 2022, the Student's wraparound program manager sent the District a court report, with educational recommendations for the Student. One recommendation was for the Student to attend school in-person all day, with a "case aide with whom the Student has built trust and rapport" and who would "accompany Student during the full school day and monitor Student's behaviors." The report stated that the Student was excited to return to school and that he had spent time over the summer working on emotional regulation skills, appropriate boundaries, and communication. The report also stated that the Student had successfully engaged with peers at a local park. The report proposed the school have a conference room or other area available for the Student and his aide to work in when needed, and that he could return to instruction with peers when possible. The goal would be for the case aide to move to the back of the class and later the hallway, and the Student could access them as needed. The report noted that this method had been a successful method for school reintegration with other similarly situated students.
29. On September 29, 2022, the IEP team met for the Student's annual IEP meeting. The District proposed services in both the special education and general education settings, as well as behavior support from a board-certified behavior analyst (BCBA) and a registered behavior therapist (BT).

The IEP notes showed that the Student's case worker requested in-person instruction and that the District stated the Student needed a therapeutic residential placement to access FAPE. The Parent concerns section of the IEP showed that the Parent stated the Student has difficulty with online learning, and it was hard to log on for his schoolwork and get him to focus and complete work. The Parent shared that the Student had made progress with his behavior, and she wanted him to have relationships with new peers. The "behavior box" was checked on the September 2022 IEP, and notes indicated that the Student had an FBA and BIP for when he is in the school setting. The general education teacher report in the September 2022 IEP noted that the Student did not login to Google Meets to find out information or ask questions. This teacher also reported that the Student was not on track and his grades were below 60%, so the Student would be exited from the online school immediately, if he did not fill out an intervention plan for the month.

The September 2022 IEP updated information about the Student's progress on goals and stated, for the social/emotional, communication, and adaptive goals, that the online school staff did not observe the Student with peers to "see his progress in this area." The

communication goal was revised in the September 2022 IEP to allow for either virtual or in-person communication with either peers or adults. The September 2022 IEP behavior goal for self-regulation was similar to the prior year's goal, but revised to include either real or imagined situations, to measure Student success with self-regulation skills.

The September 2022 IEP stated the Student was attending the virtual school with a schedule to work in person at a District high school building. The IEP noted that case aides from the wraparound provider would work with the Student to complete his schoolwork in a District building. The wraparound provider reported that the Student was successful with peers over the summer and participated in martial arts and bowling with success.

The accommodations, modifications, and supports did not change from the October 2021 IEP, and were the same in the September 2022 IEP. The September 2022 IEP showed few changes to the special education services for the Student, providing the Student with the following SDI:

- Social emotional: 60 minutes, 5 times per week;
- Adaptive: 60 minutes, 5 times per week;
- Adaptive: 10 minutes, 5 times per week;
- Reading: 30 minutes, 5 times per week;
- Written expression: 15 minutes, 5 times per week;
- Math: 30 minutes, 5 times per week; and,
- Social emotional: 45 minutes, 5 times per week.

All of the other special education services remained unchanged from the October 2021 IEP; however, the September 2022 IEP included new supplementary aids and services for the Student, which included OT support for two 20-minute sessions per month and social skills with a counselor for 120 minutes/ 4 times per week.

The LRE section of the September 2022 IEP showed that the team considered the following placements for the Student: 80–100% general education and 40–79% general education. The team selected the second option for the placement. No other placement options were discussed. The IEP noted the Student will receive regulation transportation services and general PE.

30. During the September 29, 2022 IEP meeting, the team discussed a BIP, identifying pre-escalation behaviors, strategies to reduce escalation, strategies for during an escalation, replacement behaviors, and exploration of specialized placement options. The BIP stated that the Student attended a full day in-person school program in 2021 and that he:

Had times of success with behaviors, but also had multiple instances of escalated behaviors. Due to safety concerns (high escalations and unsafe behaviors) Student was emergency expelled from school on April 14, 2022. Student then attended school via home hospital, so in-person behaviors were not able to be tracked. Since the start of the 2022-2023 school year, Student has attended [the online school]. He has been completing some work at the [high school] with the [wraparound service provider's] case aide that is assigned to him.

31. During interviews, the Complainant reported that the Student was only allowed to attend school in his assigned room at the District high school during the 2022–2023 school year, if

an aide that was provided by his wraparound provider also attended with him. The Complainant reported that the wraparound provider's aide was used in lieu of a paraeducator.

Related to the Student's instruction, the court report also noted the District had offered the Student online instruction through an online District school, with two hours of instructional time on campus with a case aide provided by the wraparound provider, in a conference room, with lunch and music class with peers. The District was to give the Student the opportunity "to increase in-person time at school with demonstration of safe and appropriate behaviors."

The Complainant stated that it was not clear who would review the Student's success, how often it would be reviewed, and when the Student would be eligible for more instructional time in school with his peers. The Complainant stated that they asked for data and progress monitoring on the Student's behavior in an attempt to increase his time at school with his peers. The Complainant alleged that the times and goals for reintegration kept changing, so that the Student was not able to return to school in a timely manner.

32. On October 6, 2022, the Student's educational advocate wrote to the District and requested a copy of the draft IEP. The District responded that day, with the draft IEP. The District asked the educational advocate to share the documents with the DCYF team for the Student.
33. On October 17, 2022, the IEP team met again, to discuss the Student's placement and services. The PWN for this meeting showed that the Student was still attending online school, while in the room of a District high school. The team decided to send elementary school staff to visit the Student during the week of October 17, 2022, and to return the Student to his neighborhood elementary school on November 7, 2022. Documentation indicated BCBA support would be added to the IEP, so the staff and Student would learn skills needed for social and academic situations.
34. On October 26, 2022, a behavior specialist from the educational service district (ESD) wrote to the District and offered to observe the Student and offer recommendations and suggestions for the Student to use in the school environment.
35. The BCBA collected data on the Student from November 2022 through March 2023.
36. On November 7, 2022, the District emailed the ESD behavior specialist and confirmed that the Student began in-person instruction on that date. The message from the District stated the BCBA or her registered BT (RBT) would work with the Student one or two hours a day that he was in the building. This email stated that the Student's school day was from 12:20–2:20. The Student continued online instruction for reading and math and the wraparound provider continued to provide the Student with support for his online work.
37. On November 29, 2022, the Student's foster care case manager wrote to the District and asked that they discuss allowing the Student to attend school full time at the next IEP meeting. The case manager wrote that the Student had asked to return to school full time, even if it meant that he would lose recreational time.

38. On November 30, 2022, a non-school District IEP team member (guardian ad litem) wrote to the Student's care team, which included both state foster care and District employees, and stated that they would like to see specific objectives for the Student to increase his independence and to start taking the bus independently, by the spring.
39. On December 14, 2022, the District wrote to the Parents and stated that transportation would be available for the Student after the winter break.
40. On January 17, 2023, the Student's case worker from DCYF sent a meeting invite out to a large group of professionals who work with the Student. The meeting invite included that the discussion would be about the Student's educational services, IEP, and community supports. District staff were included on this meeting invite. Subsequent emails discussed a mutually agreeable date and time for the IEP team to meet.
41. A PWN, dated January 31, 2023, stated that the team met and agreed to increase the Student's instructional time by 30 minutes of in-person instruction per school day, beginning February 6, 2023. This increase in in-person instruction was to be increased in 30-minute increments when the Student demonstrated cooperation 80% of the time for five consecutive days.
42. On March 16, 2023, the Student's advocate sent an email to the District to request an IEP team meeting for the Student, as soon as possible. The advocate wrote that the Student "...already reached the benchmark we were hoping to see before increasing [the Student's] time in the school building."

The District responded to the advocate this day, and wrote that, "We will need someone to submit a formal request for an IEP meeting...Once that is received, we will get the meeting scheduled."
43. On the same day, March 16, 2023, the Student's DCYF foster care case worker emailed the District, stating, "I would like to formally request an IEP team meeting to discuss increasing the Student's time at school and addressing transportation."
44. On March 16, 2023, the Student's county child advocate coordinator wrote to the Student's team, which included District staff, and asked the District for an update on data related to requests for increased school time for the Student. She specifically inquired about what progress the Student had made working with unpreferred tasks, and also asked what the behavior specialist observed and documented for the Student's current needs.
45. On March 20, 2023, the educational advocate wrote to the District to follow up on the DCYF caseworker's request for a team meeting. The advocate asked for the soonest date that the District could meet for the Student.
46. On March 20, 2023, the District's interim director of special services sent an email to the Student's DCYF social worker to schedule the IEP team meeting. Several messages were exchanged, and the District wrote that they would send proposed dates and times.

47. On March 24, 2023, the advocate again wrote to the District to schedule the IEP meeting, and wrote that, "I am growing increasingly concerned that we have not been offered any dates to consider. DCYF staff and I asked for an IEP team meeting a week and a half ago, and I have heard nothing since [District] said times would be offered."
48. On March 24, 2023, the DCYF education lead wrote to the District and Student's team and stated that the District should schedule the Student's IEP team meeting within 30 days of request. She wrote the Student "really excelled and improved" when everyone works together. A different DCYF team member responded to this email the same day and wrote that due to the Student's pro-social behaviors and progress, that she requested the team to meet as soon as possible, to "increase his school day beyond even 30 minutes." In this email, DCYF reported that the Student was doing very well in school.
49. On March 24, 2023, the District replied to these messages and stated that the potential IEP team meeting dates were provided by a different District staff member earlier that week. The advocate responded to this message and stated that all IEP team members should be "...in the loop so we can all work to support [the Student]."
50. On March 28, 2023, the educational advocate emailed the entire group and asked what dates the District was offering for the IEP team meeting. And in another email, the DCYF caseworker added the Student's educational advocate to the IEP meeting scheduling emails and conversation. Additional emails were exchanged to finalize the schedule for the requested IEP meeting.

This same date, the District wrote to the advocate to ensure that she had received an IEP team meeting invite for April 10, 2023. The advocate replied that she had not received the invite. Several messages were exchanged on this topic and the advocate did eventually receive a meeting invite from the District.

51. On March 29, 2023, the Complainant emailed the District and requested copies of the BCBA/RBT data and other records related to the Student's IEP. The District responded the next day and provided half of the materials. The District also said that it would check with the BCBA for updates on the behavioral records.
52. On March 30, 2023, the District emailed the advocate and wrote that the Student had no disciplinary referrals since he returned to the school building.
53. The District was notified that the Student was changing school districts due to a change of his foster care placement in early April of 2023. The District also stated that they sent the BCBA a request for updated data, and that they would send it upon receipt.
54. On April 10, 2023, the Student's IEP team met. The IEP amendment stated that the Student was most successful during structured times, as of his last progress report. The IEP stated, "He was making progress in Spring [2022] before his behaviors escalated again, attending through Home Hospital services (recommended based on a Doctor's request) beginning April 2022."

The behavior section of this IEP stated the Student remained in a virtual setting for the 2022–2023 school year due to “safety concerns.” The notes also show the Student did not complete baseline testing for the 2022–2023 school year, for progress monitoring related to the reading, math, and written expression goals.

The accommodations, modifications, supports, SDI, related services, and supplementary aids and services remained unchanged in the April 2023 IEP. This IEP does show that the Student required special transportation.

55. A PWN, dated April 10, 2023, stated that the District proposed to change the Student’s IEP. The PWN stated that the team met to discuss the Student’s schedule and that he had been on a modified schedule of 2.5-hour school days. The notes stated that, “The team continues to work on increasing [the Student’s] stamina for school.” The proposal for this PWN was to add an additional 30 minutes to the Student’s school day, amounting to three hours of in-person instruction per school day. The notes also show that the BCBA and BT would continue to track data on the Student, and that his school time would increase in 30-minute increments when he demonstrates cooperation 80% of the time for five consecutive days. The District’s reason for taking the action on the PWN stated that the team would like to increase the Student’s time at school, while supporting both his developing stamina for school and his self-regulation skills. The notes further stated that the Student had not met the 80% progress goal for five consecutive days, but that he was “making progress despite personal life changes and setbacks.” The notes on the PWN show that the Student was then making 60% of his goal in a separate setting (not the general education classroom).

The PWN stated that the wraparound provider provided transportation for the Student during the 2022–2023 school year. This PWN stated that the determination was made because use of District transportation was an additional stressor for the Student.

56. Also, on April 10, 2023, the District emailed the remaining documents to the Complainant at 3:08 pm. The District apologized and said the BCBA data and requested documents were not sent to the advocate in error. As such, the advocate did not have the behavior data prior to the April 10, 2023 IEP meeting.
57. On April 12, 2023, the Student was moved to a foster care placement in a different school district.
58. On April 14, 2023, the Student’s care team held a “Best Interest Determination Meeting”, which was required due to his pending dependency proceeding¹, and determined that changing school districts would be in the Student’s best interest.
59. On April 17, 2023, the Student withdrew from the District and on April 19, 2023, the Student was enrolled in the new school district.

¹ See RCW 26A.225.350.

60. The District reported in its response to this complaint that they were unaware of any issues with the Student and his outside care team, until the complaint was filed, and that they tried to serve the Student using trauma informed methods, to the best of their ability. The District reported that they believed that the remote instruction was needed, because the Student was so impacted by trauma, that he had violent reactions to school-based stimulus, so the Student needed the shortened school day to accommodate his individual needs.
61. The Complainant reported that the Student is doing well in the new district and attending school in-person for a full day.

CONCLUSIONS

Issue One: Placement/Change in Placement – The Complainant alleged the District failed to follow appropriate procedures to determine the Student’s placement subsequent to his emergency expulsion in April 2022 and continuing into the 2022–2023 school year.

Disciplinary Change in Placement: When a district removes a student from school for disciplinary reasons, it must make sure that the removal is consistent with state laws and regulations governing discipline for all students. This includes determining whether the removal resulted in a change of that student’s educational placement. Within ten school days of the district’s decision to change the student’s placement through discipline, the district, parents and other relevant members of the IEP team (as determined by the parents and the district) must determine whether the behavior that led to the disciplinary action was a manifestation of the student’s disability.

Here, the District did not utilize special education discipline procedures, despite the Student having been emergency expelled. It appears the District characterized this as a change in placement rather than discipline, and because the District stated this was a change in placement, the District did not follow discipline procedures. If the District had properly conducted the required IDEA disciplinary procedures after the April 14, 2022 emergency expulsion, then the Student’s placement may not have been changed as a manifestation determination review (MDR) would have been necessary. An MDR would more likely than not have shown that the Student’s behaviors were a result of his disability—the Student was eligible under the emotional behavioral disability category. The District bypassed all IDEA’s disciplinary requirements and instead purported to change the Student’s placement through the IEP team.

Change in Placement: Services in the Home: Following the Student’s emergency expulsion, his placement was changed following an April 19, 2022 IEP meeting. Yet, the District did not follow placement procedures in changing the Student’s placement either.

One procedural requirement of the IDEA is that a reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student’s educational program. In making this determination, the following factors must be considered: whether the educational program in the student’s IEP has been revised; whether the student will

be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement option is the same option on the continuum of alternative placements.

The Student's October 2021 IEP, in place prior to the emergency expulsion, noted the Student would be in school for 1,845 minutes per week, and in general education classes for 47.15% of the day. At the April 19, 2022 IEP meeting, the Student's placement was changed so that he was provided services at home, with the IEP and prior written notice including the following:

- "Homebound hospital" was the selected placement on the IEP.
- "The School District assigned Student to Home Hospital with the consent and input of all those in attendance."
- "Student's behavior has escalated at school such that all academics and specially designed instruction will be received via Home Hospital."
- "...set up home hospital for Student to maintain access to his education and special education services. This will include Google classroom and a 30-minute Google Meet on school days to continue the Student's academic instruction and specially designed instruction services."

OSPI notes it is unclear whether the IEP team determined the Student would be provided a homebound placement—a special education placement on the continuum of placement options referenced in special education regulations as "home instruction, and instruction in hospitals and institutions"—or whether the District was referring to providing instruction via "home/hospital instruction," which is a way for districts to provide instruction for students who are temporarily unable to attend school because of disability or illness and receive reimbursement for the provision of tutoring.²

Regardless of the District's intended placement, not only was the Student's new placement more restrictive as it was at home, the methodology of instruction was changed to online, the Student's participation and access to peers was restricted, and his overall minutes of instruction were reduced. Further, there is no evidence in the record that the Student's IEP team had a Student specific, *disability* related basis for their decision to select a homebound placement at the April 19, 2022 IEP meeting. The District reported that they believed that due to the Student's post-traumatic stress disorder and other disability related needs, social settings in school were triggers for the Student's behavioral issues. However, there was no evaluation or medical documentation that conclusively showed this.

While a later medical provider's note about the Student's new medications and an associated request for temporary home/hospital instruction for 12 weeks was later received by the District, this was after the IEP team decision was made to move the Student to the home placement, on

² OSPI notes that home/hospital instructional services in Washington shall not be used for the initial or ongoing delivery of services to students eligible for special education in a homebound placement pursuant to a student's IEP. Home/hospital instruction shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness. Importantly, home/hospital instruction is meant to provide general education tutoring and is not meant to fill the gap for student specific safety concerns nor is it intended to provide specially designed instruction. WAC 392-172A-02100; *Home/Hospital Services Guidelines* (OSPI, 2022).

April 19, 2022. The “Homebound hospital placement” was selected by the District via the IEP team, prior to any medical documentation from the Parent or a medical provider that would necessitate a homebound placement or home/hospital instruction. Rather, the IEP team met subsequent to a disciplinary issue that occurred at school on April 14, 2022, which as noted above, was more likely than not related to the Student’s disability. In fact, the IEP and PWN document from this meeting note the many “safety concerns” that the District cited to justify its selection of the placement.

Finally, the District improperly conditioned the Student’s access to increased in-person and general education instruction on demonstrating improved behavior, for example: the IEP in place at the start of the timeline indicated that “additional time with his General Education class will be added as his willingness to attend and behavior improve” and later the in-person instruction was to be increased in 30-minute increments when the Student demonstrated cooperation 80% of the time for five consecutive days. A student’s access to their least restrictive environment (LRE) and instruction generally shall be based on the student’s unique needs; it is contrary to the IDEA to require a student to earn time in school.

Here, even if the initial decision regarding the placement could have been justified, later documentation and information about the Student indicated that in-person instruction was warranted. For example, the September 2022 court report recommended the Student attend school, in-person, all day with an “aide with whom the Student has built trust and rapport” and who would “accompany Student during the full school day and monitor Student’s behaviors.” The report stated that the Student was excited to return to school and that he had spent time over the summer working on emotional regulation skills, appropriate boundaries, and communication. The report also stated that the Student had successfully engaged with peers at a local park. The report proposed the school have a conference room or other area available for the Student and his aide to work in when needed, and that he could return to instruction with peers when possible.

Overall, OSPI finds that the District improperly bypassed the disciplinary change in placement procedures despite the Student’s emergency expulsion, and then failed to follow procedures for considering a significant change in placement. The Student’s IEP team did not consider whether a reevaluation was needed prior to changing the Student’s placement to a more restrictive placement, and the IEP team’s decision seems to be based on the Student’s behavior and the discipline rather than a disability related need to receive instruction at home. OSPI finds a violation and the District will be required to conduct training on disciplinary placement changes, discipline procedures, and procedures when changing a student’s placement. The District will also be required to conduct an audit of students with a shortened school day or home placement.

Issue Two: Functional behavioral assessment (FBA) and behavioral intervention plan (BIP) – The Complainant alleged that the District failed to update the Student’s FBA and develop an appropriate BIP.

The Student in this case was moved to a placement where he received instruction at home following a behavioral incident that occurred at school on April 14, 2022 and a related emergency expulsion. The Student remained at home and received home hospital instruction throughout the 2021–2022 school year. In this case, as discussed above, had the District followed IDEA’s

disciplinary requirements for the Student instead of changing his placement, the team would likely have found that the behavior that caused the discipline was related to his emotional behavioral disability. As such, the team would have been required to review the FBA and BIP in April of 2022.³

Further, in addition to the discipline rules, for a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. In this case, the IEP team determined that the Student needed an FBA and BIP. However, the team did not revisit the Student's FBA or BIP in spring 2022, despite documentation that the Student's behavioral incidents had been increasing. There was no BIP included in the September 2022 IEP, nor was there evidence of use of a BIP during the 2022–2023 school year despite the documentation, including IEPs and PWNs, indicating the Student's behavior continued to be a concern and was a large part of why the Student remained in a more restrictive placement. The District maintained that there were safety concerns and improperly predicated the Student's access to more in-person instruction on positive behaviors. Yet, the Student's non-District staff team members indicated the Student had made progress with behaviors, communication, and peers over the summer. Despite this, the Student's IEP team did not consider whether an updated FBA or BIP were required to address whether there were changes in the Student's behaviors or behavior related needs.

As such, OSPI finds a violation. The District will be required to conduct training on FBAs, BIPs, and when to update FBAs and BIPs.

Issue Three: IEP Implementation – The Complainant alleged the District failed to implement the Student's IEP, including specially designed instruction, transportation, and 1:1 paraeducator support.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

³ Under the IDEA's discipline rules, when a student with a disability is involved in disciplinary issues that result in a removal from school of over 10 days, a manifestation determination must be held to review the behavior that led to the discipline. The IEP team must then determine if the discipline is related to a student's disability. If the school district, parent(s), and other relevant members of the student's IEP team determine the conduct was a manifestation of the student's disability, then the IEP team must either: conduct an FBA, unless the district had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior.

In this case, there is no evidence that the District provided the Student with all of his required specially designed instruction, transportation, or 1:1 paraeducator support from April 19, 2022 through the Student's withdrawal from the District in April 2023.

In the spring of 2022, the District stated the Student was receiving instruction through home/hospital instruction, which is intended to provide general education tutoring and not specially designed instruction. It is not clear the Student received any specially designed instruction during this period and there is no progress monitoring data to show that he made progress on any IEP goals from April–September 2022. The District's description of the instruction included that the Student would access "30 minutes of Google meet on school days to continue academic instruction and specially designing instruction that was posted online weekly." It is not clear that "specially designed instruction...posted online" meant the Student was receiving instruction or just had access to assignments posted online.

Further, there was no evidence that the Student received specially designed instruction in social skills, writing, math, reading, or communication with a special education teacher while he was working alone online and when he attended his classes online while in a room in the District high school building during the 2022–2023 school year. The Student's communication goal, the self-regulation goal, and the adaptive skills goal all involved interaction with others, could not be attained as written, while working alone at home and completely removed from all peers and social situations. Further, there is documentation that the Student was neither historically nor currently successful engaging with instruction through an online format, which indicates even if some amount of specially designed instruction was provided, the instructional methodology used was not appropriate for the Student.

A PWN stated the Student was assigned to work in a room in a District high school building, where he could work on general academics and IEP goals with the assistance of a paraeducator and a case aide from his wraparound service provider. Yet, the September 2022 IEP indicated the aides from the wraparound provider would work with the Student to complete his school work in a District building. Ultimately, when he worked in the high school building, that he was assisted by an aide from a wraparound provider, not a District provided special education teacher or paraeducator.

Finally, while the IEP did not include related services for transportation, the IEP did indicate that the Student needed transportation and had behavior related needs on transportation that likely meant the IEP team should have considered whether special transportation was needed prior to April 2023. However, when the Student began to access online instruction in the District high school in the fall of 2022, the District as opposed to other state agencies, was responsible for the provision of transportation services to eligible students under the IDEA, if transportation is determined necessary by the IEP team. Yet the District did not add transportation to the Student's IEP until April 2023.

Overall, the documentation in this complaint indicates that starting in April 2022, the District failed to materially implement the Student's IEP. While some instruction was provided through the online platform, it is not clear this included the full amount of specially designed instruction in the

Student's IEP or that the Student was able to access the instruction, given documentation that the Student struggled to engage with online instruction. Further, the District indicated a need for the Student to receive paraeducator support or additional adult support and did not provide it; rather, the District relied on the wraparound service provider to provide an aide to support the Student while he accessed his online school. OSPI finds a violation.

The District will be required to provide the Student compensatory education. If the Student's September 2022 IEP had been fully implemented during the 2022–2023 school year, the Student would have received the following SDI:

- Social emotional: 315 hours
- Adaptive: 210 hours
- Reading: 90 hours
- Written expression: 45 hours
- Math: 90 hours

Compensatory education is an equitable remedy that seeks to put a student in the place they would have been had the violation not occurred. In this case, the Student did receive some amount of instruction throughout the school year, albeit in a more restrictive placement and with support from the wraparound provider instead of District employee. Thus, OSPI finds it equitable to award the Student compensatory education equal to approximately 75% of what he would have received, had his IEP been fully implemented, or:

- Social emotional: 236 hours
- Adaptive: 157 hours
- Reading: 67 hours
- Written expression: 33 hours
- Math: 67 hours

Issue Four: IEP Meetings – The Complainant alleged the District failed to schedule requested IEP meetings.

When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

In this case, the record shows that several professionals corresponded with the District to request and schedule team meetings throughout the 2022–2023 school year. The District worked with each of the Student's care team members from various agencies. While there were concerns expressed about the Student's FAPE, which would warrant either an IEP meeting or a PWN showing the District's refusal to meet, there is no evidence that the District either failed to meet or failed to produce a PWN. There were many requests for the team to meet in August and September of 2022, and the team did meet in September of 2022. There were also requests for the team to meet in late March of 2023, and the team did meet in April of 2023.⁴ While it did take

⁴ OSPI notes that at one point, the District required one of the Student's advocates to "submit a formal request for an IEP meeting." Anyone on the IEP team can request an IEP meeting. There is no process for a

many email messages and reminders from various parties, the District was able to convene the requested IEP meetings and met several times throughout the school year for this Student. OSPI finds no violation.

Issue Five: Records Requests – The Complainant alleged the District failed to appropriately respond to requests to access the Student’s records.

Districts must permit the parents or guardians of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made.

The Student’s care team members did request Student records for the Student on multiple occasions. However, there is no evidence that the District failed to provide any records within 45 days. Some of the data requested did need to come from the BCBA and took some time to obtain. While the District unnecessarily asked the advocate for a “formal” request at one point, the District did still provide the requested data within 45 days.

There was only one instance related to records where the District failed to provide records prior to a meeting. The Student’s advocate requested behavioral data and records prior to the April 10, 2023 IEP meeting. These items were not sent in advance of the meeting. The records show the data was sent to the advocate after the IEP meeting, and state and federal rules require districts to provide access to requested records prior to an IEP meeting. Therefore, related to this instance, OSPI finds a violation and the District will be required to conduct training on responding to records requests.

CORRECTIVE ACTIONS

By or before **June 30, 2023, July 7, 2023, July 14, 2023, August 4, 2023, September 22, 2023, December 29, 2023, February 23, 2024, and June 7, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **July 7, 2023**, the District and Parent will develop a schedule for the following hours of compensatory education:

- Social emotional: 236 hours
- Adaptive: 157 hours
- Reading: 67 hours
- Written Expression: 33 hours
- Math: 67 hours

“formal” request for an IEP meeting and an IEP team member should not need to make a “formal” request. However, in this case, despite this, the District did schedule an IEP meeting shortly after this request was made.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The services could also be provided via reimbursement for private services, a summer camp/or program, or tutoring the Student is enrolled in. The District will provide OSPI with documentation of the schedule for services by or before **July 7, 2023**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **June 3, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **September 22, 2023, December 29, 2023, and February 23, 2024** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **June 7, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **June 7, 2024**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other OSPI-approved trainer), will develop and develop a training/training implementation plan and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-57.

The following District staff will receive training: District special education administrators, and the following at the Student's 2021–2022 and 2022–2023 school(s): principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Disciplinary placement changes, discipline procedures, and procedures when changing a student's placement.
- Considerations for homebound placements.
- FBAs, BIPs, and when to update FBAs and BIPs.
- Responding to record requests.

The training will include examples.

By or before **June 30, 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.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation support could include job embedded coaching, holding community/parent engagement meetings, additional trainings or development of a training series, exploring policy and procedure revision, etc. By or before **July 14, 2023**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval.

By or before **August 4, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 11, 2023.

By **September 15, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 22, 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.

Audit

The District will conduct an audit of its students eligible for special education to identify students that are in homebound placements, on a shortened school day, and/or receive instruction through home hospital. The District will review the student files and provide a list or spreadsheet of all students eligible for special education currently on a shortened day, accessing home/hospital, or on a homebound placement at any point during the 2022–2023 school year, including initiation date and (as applicable) end date. The District may wish to partner with the ESD or a consultant to carry out this audit.

By **August 4, 2023**, the District will provide OSPI with a list or spreadsheet of all students eligible for special education currently on a shortened day, accessing home/hospital, or on a homebound placement at any point during the 2022-2023 school year, including initiation date and (as applicable) end date. The spreadsheet will include the following:

- Student name, grade, and disability category
- Each Student's Placement
 - If the Student is on a homebound placement, the reason why that placement was chosen.
 - Initiation date of placement and (as applicable) end date.
- Whether the Student's school day has been shortened and why that decision was made.
 - Initiation date of a shortened day schedule and (as applicable) end date.
- Whether the Student receives instruction/tutoring through home hospital.
 - Initiation date of instruction/tutoring and (as applicable) end date.

Following receipt of the spreadsheet, OSPI will review and determine if further documentation deadlines or corrective actions are needed related to the findings of the audit. If concerns arise during the audit, OSPI encourages the District to propose next steps.

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 15th day of June, 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.)