

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-44

PROCEDURAL HISTORY

On April 20, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 21, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 25 and 26, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of this information on April 26, 2022.

On May 5, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of this information the same day.

On May 6, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on May 10, 2022. OSPI invited the Parent to reply.

On June 7 and 8, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on June 8, 2022. OSPI forwarded that information to the Parent on June 9, 2022.

On June 7, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information from the Parent on June 7, 2022. OSPI forwarded that information to the District on June 8, 2022.

On June 8, 2022, OSPI's investigator conducted a Zoom interview of the paraeducator.

On June 9, 2022, OSPI's investigator conducted a Zoom interview of the general education teacher.

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

ISSUE

1. During the 2021–2022 school year, did the District implement those provisions of the Student's individualized education program (IEP) that related to paraeducator support?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special

education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

Evidentiary Weight: According to the Office of Special Education and Rehabilitative Services, "it would not be inconsistent with the IDEA...for a State to use a 'preponderance of the evidence' standard in making independent determinations as to whether a public agency violated a requirement of Part B of the IDEA." *Letter to Reilly*, 64 IDELR 219 (OSERS 2014). Merriam-Webster's Dictionary of Law defines the phrase "preponderance of the evidence" as "the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not." MERRIAM-WEBSTER'S DICTIONARY OF LAW 377 (1996).

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. WAC 392-172A-01175(3)(c).

Provision of Specially Designed Instruction: A paraeducator can provide special education, so long as the provision is "under the supervision of a certificated teacher with a special education endorsement" and "student progress must be monitored and evaluated by special education certified staff." WAC 392-172A-02090(1)(h)-(i).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). 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); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Complainants 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.

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021-2022 school year, the Student was eligible for special education services under the category of developmental delays, was in kindergarten, and attended a District elementary school. At that time, the Student's June 2021 individualized education program (IEP) was in effect.
2. On September 3, 2021, special education teacher 1 emailed the program specialist, stating, in part, "I was very uncomfortable when I saw the number of service minutes pre-school had him set up for (which is not reflective of what our kindergarten [program] can offer)."
3. The District's first day of school was September 9, 2021.
4. On September 9, 2021, the Parent emailed several District staff members, stating she was concerned the Student's IEP was not being properly implemented.

The June 2021 IEP provided the Student with the following specially designed instruction each day in a *special education setting* (to be provided by special education staff): 12 minutes of social behavior. The June 2021 IEP provided the Student with the following specially designed instruction each day in a *general education setting* (to be provided by special education staff): 30 minutes of social behavior¹ and 60 minutes of cognitive/pre-academics (cognitive).

The June 2021 IEP included one cognitive goal each for the following areas: math; reading; and written language. The June 2021 IEP also included three social/behavior goals.

In its response, the District noted, in part, "There is no mention [in the June 2021 IEP] of Student requiring specific support from a paraeducator. All specially designed instruction minutes outlined in Student's IEP are to be served by 'special education staff' ([in other words], either a special education teacher or paraeducator)."

5. The District's response included a schedule for the Student that, upon knowledge and belief, was implemented from approximately September 9 through November 15, 2021 (**schedule 1**).²

¹ In total, then, under the June 2021 IEP, the Student was to receive 42 minutes of specially designed instruction in social behavior each day, across both *general education* and *special education settings*.

² Upon knowledge and belief, **schedule 1** was an approximation of the Student's schedule during the above-stated time, as the District's response noted, in part, there were "variations of the schedule." In clarifying information provided to OSPI, the District stated: According to the District, **schedule 1** was created based on "schedules and emails [related to] the [provision] of specially designed instruction that special education

Under **schedule 1**, the Student received the following specially designed instruction each day on Monday, Tuesday, and Friday: 57.5 minutes of social behavior; and 82.5 minutes of cognitive.

Under **schedule 1**, the Student received the following specially designed instruction each day on Wednesday and Thursday: 37.5 minutes of social behavior and 82.5 minutes of cognitive.

Under **schedule 1**, all specially designed instruction was provided in the *general education setting*, and in its response, the District acknowledged, “this is not what the [June 2021] IEP called for, as Student should have been receiving social behavior specially designed instruction in the *special education setting* for 60 minutes a week.” (Though, in its response, the District also noted: “from a review of correspondence, it appears that specially designed instruction in the *general education setting* was the intent of the full team, including the Parent, who did not want Student served in the resource classroom except for limited circumstances ([for example], assessments).”)

In relation to **schedule 1**, during this investigation, including in an interview: the paraeducator confirmed that she does not provide the Student with specially designed instruction in math during the afternoon period in which the general education class, as a whole, focuses on math; and District counsel was unable to get clarity on whether specially designed instruction in math was provided during the times special education teacher 1 spent with the Student—though “some of [the] time seemed to be clearly related to reading.”

6. In relation to **schedule 1**, the District’s response read, in part:

Overall, Student would start his day with push-in support from special education teacher 1 and then receive a combination of support from special education teacher 1 and the paraeducator in the *general education [setting]* and during transitions, [ensuring] Student received any needed prompting to engage with schoolwork, and gained practice socializing with peers, especially during lunch and recess.

During this investigation, the District clarified that all specially designed instruction provided to the Student was via a “push-in” model—meaning it was provided in the *general education setting*.

7. The Parent’s complaint request read, in part, “Most days [Student] thrives socially and academically...He has a deep connection with his [paraeducator]. There is a marked difference [though] on days without the paraeducator (as related by Student, his teacher, and our observations on his mood after school).”
8. On September 9, 2021, special education teacher 1 emailed the Parent, stating, in part, “We have been talking about best times we can push-in for support.”

teacher 1...provided [throughout the first part of the 2021–2022 school year]”, and the District, in preparing its response, did not have a chance to interview special education teacher 1.

9. On September 10, 2021, the program specialist emailed the assistant principal, stating, in part, "I have called the family and resolves the concerns...I reassured Parent that the school had more than enough staff to implement the Student's IEP."
10. On September 14, 2021, special education teacher 1 created a chart for the Student that, upon knowledge and belief, shows the times the Student was receiving specially designed instruction as of that date. The chart showed: special education teacher 1 worked with the Student from 8:55–9:15 and 10:40–11:10 am; and the paraeducator worked with the Student from 11–11:20 am and 3–3:30 pm.
11. On September 20, 2021, special education teacher 1 emailed the program specialist, stating, in part, "Paraeducator is with Student some more [lately]."
12. In a September 28, 2021 email to the general education teacher, the Parent referenced the fact that the paraeducator had recently provided the Parent with an update on some of the paraeducator's recent work with the Student.
13. On September 29, 2021, special education teacher 1 emailed the assistant principal, stating, in part, "This is updated with Student's schedule...We are basically spot on with the minutes for Student" (late September 2021 schedule).
14. On October 1, 2021, special education teacher 1 emailed the Parent, stating, in part, "Student did not let me help him or go to his desk until he saw I was serious about leaving if he did not get up. If the goal is for him to work effectively and in a timely manner in the morning, he did not meet that goal."
15. An October 1, 2021 email from special education teacher 1 to the program specialist showed, around that time, special education teacher 1 was working with the Student, at least in part, from 10:17–10:40 am ("Student transition to lunch").
16. An October 7, 2021 email from special education teacher 1 to the Parent indicated the special education teacher worked with the Student, in some capacity, on the morning of October 7, 2021.

A separate October 7, 2021 email from special education teacher 1 to the Parent read, in part, "Student should be socializing at recess and we do have paraprofessional time scheduled with him then. Student's morning work from this morning was in his desk at lunch."
17. On October 10, 2021, the Parent emailed special education teacher 1, stating, in part, "Paraeducator did mention that she is helping Student to socialize at lunchtime."
18. On October 11, 2021, special education teacher 1 emailed the academic intervention specialist stating, in part, "Student has 'pre-academic' goals (so basically, yes, [Student has specially designed instruction in reading and math] and he needs it somewhat)."

19. On October 18, 2021, special education teacher 1 emailed the Student's IEP team members, (including the Parent) an update, stating, in part:

Student is doing really well with assistance, as he completes his morning worksheet in seven of 10 opportunities with support.

Student is participating in play activities when an adult is present to help him transition into said activity.

Student is able to lineup and transition with his class/stay with his class with no additional support when transitioning from his classroom — we still need to make sure transitions happen successfully when coming from a less structured environment or activity.

...

Student was able to count with me to 20, and counted to at least five on his own. I feel [the current goal in this area] is too easy of a goal, and that we should ask if we should add a goal focused on addition.

Student is writing some letters independently, but struggled greatly when writing letters such as C and S, which curve to the left. I think writing in complete sentences may be a little lofty, and we may want to consider focusing on independent letter formation.

20. On October 26, 2021, the general education teacher emailed the principal, stating, in part:

Over the last few weeks, I've noticed that many days, paraeducator, who is scheduled to help Student make transitions, does not seem to be available during the lunch transition to recess (approximately 10:50 am). It often results in Student still eating lunch at 11:10 am, and not having an opportunity to play...It sounds like the problem is that paraeducator is being tasked with other things by other teachers, perhaps, so I'm just making sure that it's known that she's scheduled to be with my student at that time.

On November 5, 2021, the principal responded, stating, in part, "We met as a special education team and I believe this has been solved." That same day, the general education teacher responded, stating, in part, "It's been working out really well!"

21. On November 1, 2021, the Parent emailed special education teacher 1, stating, in part, "I've been volunteering at the school quite a bit lately [and] Student's interacting with other kids at recess way more than he did at preschool!"

22. On November 15, 2021, the Student's IEP team amended the Student's June 2021 IEP. The November 2021 amended IEP provided the following specially designed instruction each day in a *general education setting*: 30 minutes of cognitive and 40 minutes of social behavior.

According to the District's response:

The team amended the goals [in the June 2021 IEP], adding a social behavior goal focused on transitions, chang[ed] Student's math goal from counting to adding, and chang[ed] his written goal from sentence formation to formation of letters.

...

The minutes [in the June 2021 IEP] were reduced [in the November 2021 amended IEP] to reflect Student's progress in both academics and social behavior, as he required less

support in the general education environment and no longer needed as much support socializing with peers at recess.³

23. According to the Parent:

At [the] IEP meeting in November we discussed Student's progress. At the start of the year he had been in his seat 10% of the time, and under his desk/in a bookshelf, etc. 90% of the time. By November that had flipped - he was in his seat 90% of the time, expressed loving school, his classmates, paraeducator, and general education teacher, and he was progressing academically and socially/behaviorally.

24. The District's response included a November 15, 2021 progress report related to the goals in the November 2021 amended IEP. The entries for said report read, in part:

- **Social/Behavior 1:** some progress made;
- **Social/Behavior 2 (self-advocate):** little or no progress made;
- **Social/Behavior 3 (independently request break strategy):** not applicable;
- **Social/Behavior 4:** significant progress made;
- **Cognitive – pre-academics 1 (letter formation):** little or no progress made;
- **Cognitive – pre-academics 2 (adding):** significant progress made; and,
- **Cognitive – pre-academics 3:** significant progress made.

25. According to the District:

Following the [November 2021] IEP meeting, Student's service minutes and schedule was adjusted to reflect the reduction of minutes in the amended IEP, with the team decreasing specially designed instruction minutes during recess and after the morning meeting [(**schedule 2**)]. Special education teacher 1 continued to serve Student at the start of the school day to ease his transition into school, and the paraeducator continued to serve Student during the lunch transition, following lunch for preacademic specially designed instruction, and at the end of the school day.

26. The District was on break December 20–31, 2021.

27. According to the District, "following [winter] break, special education teacher 1 vacated his position."

28. On January 5, 2022, the assistant principal emailed the Parent, stating, in part, "Paraeducator is providing the supports for Student. Also, until the position is filled, our other resource teacher will support [services previously provided by] special education teacher 1."⁴

³ The District's response also referenced an earlier email communication between the Parent and the program specialist, wherein it was noted the June 2021 IEP "was developed for the preschool environment [and] not the elementary school setting" Student was in during the 2021–2022 school year.

⁴ In an earlier email, dated January 5, 2022, the Parent noted, "Student's really happy to be back at school, is eager to work on numbers/math and reading with us at home, and I think all is going well at school right now."

29. During this investigation, special education teacher 2 clarified that, beginning in January 2022, "Student was...served both for academics and behavior [specially designed instruction] by paraeducator."
30. According to the Parent, "following the departure of special education teacher 1 over winter break we noticed a significant decline in services to Student under special education teacher 2."
31. On January 13, 2022, the Parent emailed the principal and the paraeducator, stating, in part: Student has made a lot of progress and by winter break had fairly little time with special education teacher 1 (and has not had resource room time except for assessments), so I'm guessing special education teacher 1's replacement won't be involved in a lot of the day-to-day.⁵

Later that day, the principal responded, stating special education teacher 2 was going to be replacing special education teacher 1, and that "Student will continue to be supported by the paraeducator, as he is now."

On January 14, 2022, the paraeducator responded, stating, in part, "I was out for a couple days for personal reasons but prior to that I have been working with Student on a regular basis."

32. On January 27, 2022, the Parent emailed the general education teacher, the paraeducator, special education teacher 2, and the assistant principal, stating, in part:
- From our perspective, Student is doing really well. He has made a lot of progress on the social/emotional goals in particular recently. Every day Student comes home talking about various classmates in this week about wanting to help other students earn promise cards. As you all know, this is a big change.
- Student is reading with us (sounding out words using the arm method) and working on math (counting, adding, subtracting, even and odd numbers, square numbers). I mention this because I think Student sometimes 'tries out' new skills at home, before feeling comfortable with them at school—maybe stemming from same anxiety and self-consciousness.

Later that day, special education teacher 2 responded, stating, in part, "The paraeducator and I collaborated on Student's progress this morning and the paraeducator is in agreement with all you said. The paraeducator will continue to work with Student and share Student's progress with me. I hope we will be able to exit Student by the beginning of next year."

33. On February 1, 2022, special education teacher 2 emailed special education teacher 3, stating, in part, "I don't see where Student is getting served for academics. The principal's schedule has paraeducator working with Student from 9:00 to 9:15...The principal said that the paraeducator would be working with him so I did not have to include Student in my schedule."

⁵ In additional information provided to OSPI during this investigation, the Parent stated, "I never had a clear idea of when push-in [specially designed instruction] minutes were being provided by special education teacher 1 (or others)."

Later that day, after being forwarded special education teacher 2's message, the program specialist wrote special education teacher 3: "I'm not sure what to say. She is right. Paraeducator was supposed to be serving Student. When did that change?"

Later that day, special education teacher 3 responded, stating, in part, "To the best of my knowledge it has not changed, paraeducator is doing phonics and reading after lunch with Student."

34. In a separate email on February 1, 2022, special education teacher 3 emailed the program specialist stating, in part, "It looks like special education teacher 2 is doing the 9:00 – 9:15 block with Student, not paraeducator."

35. On or about February 2, 2022, at the request of the assistant principal, special education teacher 2 conducted an audit of the total amount of specially designed instruction the Student was receiving.

On February 2, 2022, special education teacher 2 reported her results in an email to the assistant principal, stating, in part, "Student is getting 485 minutes [each week] when he should only be getting 350 [minutes each week]. He is getting more than is required. Paraeducator should not have to see him for [the] 9:00 – 9:15 slot."

According to the District's response, with the foregoing statement, special education teacher 2 was stating that the "paraeducator did not need to take over the morning minutes that had previously be served by special education teacher 1 (8:55 am – 9:20 am)."

36. On February 2, 2022, the paraeducator emailed the Parent, stating, in part, "Student is a super awesome guy and I love working with him. He has been [utilizing the] spelling arm [strategy] and his reading [assignments] with minimal prompts from me."

Later that day, the Parent responded, stating, in part:

Student told me all about the...figurine, and that you gave it to him for his work on phonics. He taught us the art method for sounding out words and we have been using it when reading together at home. I've also heard him spelling words to himself and picking up books and sounding out words, so I know he is absorbing a lot. He read most of his book to himself on the way home in the car today.

37. According to the District's response, the Student's IEP team met on February 4, 2022, and "because Student benefited from having support at the start of the school day, the team agreed they would readjust the schedule again so paraeducator could support Student's transition into the school day a few days a week" (**schedule 3**).

38. On February 7, 2022, special education teacher 2 emailed the program specialist, stating, in part, "The paraeducator says Student is doing fine with social skills and [the individual] who tested him for math said that he is low average, but within grade level."

39. The District was on break February 21–25, 2022.

40. On March 8, 2022, special education teacher 2 emailed the general education teacher, stating, in part, "How is Student doing in class both academically and socially? Paraeducator is giving him a kindergarten master track test, but is he participating in math, reading, writing etc? How many hours does paraeducator work with him?"

Later that day, the general education teacher emailed special education teacher 2, stating, in part:

Student knows nearly all of his letter names, letter sounds, numbers, and shapes. He is able to sound out small...words with help, but mostly he seems to have them memorized along with several sight words.

...

The paraeducator works with student to transition from recess to the rest of the academic day, usually for about one half hour or more after we come in, put our heads down, and have quiet time – approximately 11:30 am. Previously, special education teacher 1 was there to help student at the beginning of the day, and then usually for one more academic period later in the day.

41. On March 9, 2022, the paraeducator emailed the Parent, stating, in part:

My schedule was adjusted due to some unforeseen changes...However, this was not working for Student's minutes so back to the drawing board we went. 9:50 pm to [10:00] am they are coming in off the playground – hanging coats of and getting settled in their seats. Student does fine with that. 9:00 am is the time they transition into work mode for the day, and that is the time that would benefit student for me to be in there. So, Monday through Thursday for the first 10 to 15 minutes, I am going to be in there.

Student is becoming a lot more independent and is building up his confidence in his abilities...Student is teaching me the sight words and how to sound out words because [I] come across a lot of words that [I am] unsure of and Student helps [me] to become a stronger reader.

42. The District's response included a mid-March 2022 progress report related to the goals in the November 2021 amended IEP. The entries read, in part:

- **Social/Behavior 1:** significant progress made;
- **Social/Behavior 2:** some progress made;
- **Social/Behavior 3:** some progress made⁶;
- **Cognitive – pre-academics 1:** some progress made;
- **Cognitive – pre-academics 2:** some progress made; and,
- **Cognitive – pre-academics 3:** some progress made.⁷

43. According to the District, the Student's November 2021 amended IEP was not subsequently amended during the 2021–2022 school year, but "the Student's annual IEP meeting was held

⁶ The mid-March 2022 entry for **Social/Behavior 3** read, in part, "Student is working on this goal. He had a difficult time the first day after the mid-winter break, wanting to wander around the room and touch everything but he soon settled into the routine."

⁷ The mid-March 2022 progress report did not include an entry for **Social/Behavior 4**. (And progress on **Social/Behavior 4** was to be reported via a written progress report at the end of each semester.)

on May 25, 2022 [and] it is [District counsel's] understanding that following the meeting, the Parent requested an additional accommodation and [as of June 8, 2022] that the team is working on responding to the request."

44. On March 29, 2022, the general education teacher emailed the assistant principal, stating, in part, "I not sure if we are meeting Student's updated amount of minutes, since special education teacher 1 left and paraeducator has had her schedule changed. I have noticed (and let his mom know) that I think some of his independence and routines has slipped since January."

Separately on March 29, 2022, special education teacher 2 emailed the program specialist, stating, in part:

Did you change the paraeducator's schedule? I just found out that paraeducator is not seeing Student in the morning for any length of time, nor is she supervising Student for art [class] or garden [class]. Paraeducator is seeing him for 50 minutes from 11:10 [am] to 12 [pm]. Nothing in the afternoon as well. Student is regressing according to his [general education] teacher.⁸

Later that day, the program specialist responded to special education teacher 2, stating, in part, "Student should be getting 70 minutes a day from all special education staff."

45. On March 31, 2022, the Parent emailed members of the Student's IEP team, stating she was concerned the Student was not receiving the amount of specially designed instruction included in his November 2021 amended IEP.

46. On April 1, 2022, the paraeducator emailed the Parent, the general education teacher, the program specialist, and the assistant principal, stating, in part:

Student's transition times seem to be the area of focus and getting settled in during the morning routine, after lunch, and after [preparation, conference, and planning] times. I don't want Student to have a deficit of the time he needs, or regressed in the progress he has made. I will go back to the old schedule with him and make sure he is getting the time needed.

Later that day, the assistant principal responded, stating, in part, "Thank you paraeducator for adjusting your schedule to provide the supports for Student's success in class."

47. In responding to this complaint, the paraeducator created what she recalled her schedule to be as of approximately April 1, 2022:

Monday/Tuesday/Friday

9–9:15: Check-in (social behavior SDI) and work time (preacademic SDI)

11:10–12: Lunch transition and preacademic SDI

⁸ Earlier on March 29, 2022, special education teacher 2 emailed the general education teacher, requesting an update on "how Student is doing compared to others in [the] class." In her email, special education teacher 2 requested the general education teacher fill in information related to the following: shapes; "numbers to"; adding; subtracting; counting objects; colors; letters/sounds; reading level; writing sentences of three words or more; behaviors; and, social/emotional needs.

3:15–3:25: social behavior SDI during clean-up, story, and dismissal

Wednesday

9–9:15: Check-in (social behavior SDI) and work time (preacademic SDI)

9:30–9:45: social/behavior SDI during art

11:10–12: Lunch transition and preacademic SDI

2–2:10: social behavior SDI during clean-up, story, and dismissal

[Thursday]

9–9:15: Check-in (social behavior SDI) and work time (preacademic SDI)

9:30–10: social/behavior SDI during garden

11:10–12: Lunch transition and preacademic SDI

3:15–3:25: social behavior SDI during clean-up, story, and dismissal

48. On April 4, 2022, special education teacher 2 emailed the paraeducator, stating, in part, “I just talked to general education teacher and he said he really needs you in the morning [for Student] for that 10– 5 minutes.”

Separately on April 4, 2022, the Parent emailed the assistant principal, postulating that some of the Student’s recent social-emotional-behavioral challenges might be related, at least in part, to “anxiety about the upcoming transition to first grade” and “leaving the general education teacher.”⁹

49. The District’s response included, in part, a chronological narrative. Between information dated April 1, 2022 and information dated April 7, 2022, the following text appears:

[During the District’s investigation of the Parent’s concerns, as contained in her community complaint request], the paraeducator acknowledged that at times, due to coverage issues, school schedule changes (e.g., schoolwide testing), and other unanticipated events, her schedule with Student can vary and he may not receive the increased minutes, but that overall, he generally receives the minutes called for in his IEP.

50. The District’s response included a handwritten chart that it stated was created by the general education teacher (paraeducator chart). The paraeducator chart covers the two-week period from April 25 through May 5, 2022. For each day, the paraeducator chart has a morning, lunch, and afternoon column—and the general education paraeducator noted whether the paraeducator was present for the respective part of the day. On May 2, 2022, the Student was absent.

The paraeducator chart showed the following: the paraeducator was present on 7 of 24 possible occasions; the paraeducator was not present on 14 of 24 possible occasions; and the

⁹ In other April 2022 emails, the Parent expressed concern that the paraeducator’s position was being eliminated for the 2022–2023 school year, and the potential negative impact this would have on the Student’s ability to access the Student’s IEP services.

general educator teacher's entry was either blank and/or labeled "unsure" on three occasions.¹⁰

51. On May 4, 2022, the general education teacher emailed the Parent, stating, in part:

What's been happening is that paraeducator is here occasionally in the morning and more occasionally here after lunch. We initially had those set up to help with transitions, but I think that those are fairly well covered now (and for my part, helping Student put his backpack up/get started on morning work is not too hard). From what I've seen it's actually the latter half of the day, during academic times like writing or phonics or math when Student could use the most support now, and so that's something I'll bring up at the IEP meeting.

I'm sure the minutes are on paraeducator's schedule, but I've actually been keeping a tracker of when she's been in class and when, for whatever reason, she hasn't been, and it's fairly inconsistent. Last week she was not here at all on Thursday nor was she with him at all yesterday, apparently due to testing in the upper grades. If she is meant to be helping in the afternoon, she hasn't been at all for the last few weeks I've been keeping the tracker.

52. Towards the end of the narrative portion of its response, the District stated, "Overall, the District believes Student has been receiving 350 minutes of specially designed instruction per week, despite some discrepancies."

53. The District's response included an early June 2022 progress report related to the goals in the November 2021 amended IEP. The entries for said report read, in part:

- **Social/Behavior 1:** some progress made;
- **Social/Behavior 2:** some progress made;
- **Social/Behavior 3:** some progress made;
- **Social/Behavior 4:** some progress made;
- **Cognitive – pre-academics 1:** some progress made;
- **Cognitive – pre-academics 2:** some progress made; and,
- **Cognitive – pre-academics 3:** some progress made.

54. On June 8, 2022, OSPI's investigator interviewed the paraeducator working with the Student. The investigator's notes from that interview are as follows:

General: During 2021–2022, the paraeducator also worked with middle schoolers – the Student was the paraeducator's only elementary school student. Periodically, if a different student was having a crisis, the paraeducator would be pulled away from working with the Student.

Art is on Wednesdays from 9:30–9:45 – the paraeducator would go with Student to art. 'Just making sure he was in class and ready to do his art projects.'¹¹ Garden is on Thursdays

¹⁰ In its response, in relation to the paraeducator chart, the District stated, in part, "During both weeks, special education teacher 2 was largely absent due to illness, and, during the week of May 2, 2022, the school was conducting schoolwide...assessments, resulting in schedule changes at the school level."

¹¹ Single parentheses represent paraphrasing—a rough approximation of what the paraeducator said during the interview.

from 9:30–10 – ‘Sometimes during that time slot I was not always there [as I had another obligation scheduled with other students for at least a part of the time] when Garden Class met. ‘When present for Garden Class, I tried to spend more time with Student because Student would explore in the garden [and] needed more supervision.’

Fall 2021 – Schedule and Provision of Services: ‘I’ve been working with Student consistently since September 2021.’ ‘In the beginning, fall 2021, I would do check-in with special education teacher 1 at start of school day. [I would also work with the Student around] lunch time, recess, and transition to work time (10:30–12). Slowly this [time with the Student was] reduced because Student was doing so good. I still came in roughly 11:10–12 [though] even after Student made a lot of progress [and some of the time was reduced].’

Lunch and recess: ‘from September through beginning of November, I was there at lunch and outside probably 90% of the time. As Student started making friends, [he] didn’t need me there. [And, from] mid-November through Christmas break, I was there 70-75% of time (11:10–12 [though, I was] still present for transitions into independent work).’

Special education teacher 1 worked with the Student in the morning.

Spring 2022 – Schedule and Provision of Services: ‘Special education teacher 2 has met with Student maybe twice—I have 99% of contact with Student—and then I touch base with special education teacher 2.’

‘[The first contact special education teacher 2 had with the Student] was a meet-and-greet. [The] second time was [when] special education teacher 2 did an assessment of Student. I stayed with Student during assessment because Student did not know special education teacher 2.’

Paraeducator would periodically check-in special education teacher 2. But special education teacher 2 never specifically designed a curriculum. Paraeducator and special education teacher 2 never had a specific conversation in regard to the specific IEP goals – ‘[we] never had that conversation.’ (But paraeducator did have such a conversation with special education teacher 1 during the fall 2021 semester.)

Paraeducator had to help out with testing for middle schoolers at some point in the spring and this might have disrupted Student’s services for a week and a half or so.

Lunch was not needed for a while because the Student was doing well with socialization. But then when the Student showed a potential regression in this area and lunch with paraeducator support was reincorporated. But paraeducator stated, ‘I was still there for 11:10–12 for transition to work 85%-90% of the time.’

Morning: paraeducator stopped being involved at a certain point because the Student appeared to be doing well with the transition in the morning.

There were noticeable behavior changes started March 2022—the Student said, “I don’t want to go to first grade”, started blurting out, and poked friends. Probably around end of April/beginning of May—paraeducator resumed working with the Student at recess and lunch and in the morning. The Student shared with paraeducator that he was very nervous about transitioning to first grade and would miss his friends. Staff suggestion was don’t mention the Student going to first grade because that will just cause anxiety.

IEP Goals

Social/Behavior 1: 'During lunch time...when I first started, Student would spend whole time eating lunch. Would try to help student to eat more quickly and prompt Student to play and engage with others. [For example], 'what do you need to do to play with them?' Gave Student space as play became more organic and normal...In classroom, if they were doing activities, they had buddies with mood meter check-ins, and I'd encourage Student to share feelings and activity time.'

Social/Behavior 2: The classroom has a conflict resolution bench—each student gets a chance to talk—paraeducator helped the students resolve the issue. Paraeducator would work with the Student on what some alternative responses would be if Student did something that did not align with his social/behavior goals. Typical issues addressed: if someone upsets you, you don't respond by hitting them; using your words to articulate feelings; and, if you don't understand something, raise your hands.

Social/Behavior 3: Student had a hand sign he'd use to ask for break—it'd be a walk outside, a change of scenery—40% of the time, the Student would advocate for himself to take a break, the other 60% of the time, paraeducator would suggest that he take a break.

Social/Behavior 4: the Student knew where the scissors and the crayons were but if general education teacher was busy reading a story, sometimes the Student would grab the wrong items. For Choice Time, the Student did well. According to the paraeducator, performance on this goal really fluctuated, depending on how the Student was feeling that day.

Cognitive/Pre-academics 1 (letter formation): Every morning they got a worksheet on letters or numbers that would be traced and then a blank spot where they had to mark it and as the school year progress, the worksheets expanded to cover short words. Beginning March 2022: the Student did not want to do his work—for example—he would say things like 'school is trash' or 'I don't want to be a first grader.' 'I would take my hand and put it over his and help him trace. I would reward him with drawing time (he liked to draw tornadoes). If I was sitting right there with him, he would try, but if not, he would just draw over all his work—would lose all interest in schoolwork.' Paraeducator stated she reported these concerns to the teachers and the Parent. Paraeducator stated she would occasionally take Student to alternate area to complete work.

Cognitive/Pre-academics 2 (math): Paraeducator did not work with the Student on math—the general education teacher provided math instruction.

Cognitive/Pre-academics 3 (phonics/reading): 'Sometimes I would pretend like I could not read, and I would let the student try to teach me—I'd stop in the beginning, middle, and end and ask the Student 'what happened' and check-in with the Student to make sure the Student understood the story.' If paraeducator read story, the Student could repeat almost verbatim, but if the Student was center of attention and had to read it, he would have more difficulty. Time of day: after lunch, during the independent reading—11:30–11:50.

55. On June 9, 2022, OSPI's investigator interviewed the general education teacher. OSPI's investigator's notes from that interview are as follows:

Fall 2021: Special education teacher 1 'pretty consistently' worked with the Student roughly 15 to 20 minutes each morning. And, as far as general education teacher recalls, it was always special education teacher 1.

Interview Question: Did special education teacher 1 then work with the Student again later in the morning—from approximately 10:15–10:40 throughout the fall 2021 semester?

Answer: 'Really difficult to remember...schedules were changing a lot...not sure.'

Spring 2022: Special education teacher 2 was not in the classroom working with the Student on a regular basis. From January 2022 through the end of April/early May 2022, paraeducator was occasionally but not consistently present with the Student during the morning.

Specially Designed Instruction Tracking Document: General education teacher completed this because the Parent asked about consistency and general education teacher was not prepared to give a detailed answer at that time but it 'did seem like paraeducator was getting pulled away a lot' and so the general education teacher completed the tracker to be able to provide the Parent with a firm answer. Sometimes paraeducator would be pulled for testing but then able to come a little later.

Student's behavioral regression: 'Consistency is always key—if there is inconsistency that's going to lead to something one way or the other. Around [spring 2022] the Student was expressing anxiety to the Parent about having to transition to first class next year.' Student would say: "I don't want to go to first grade." The Student would also countermand the general education teacher's directives and try to get attention from the class.

CONCLUSIONS

Issue 1: Implementation of Paraeducator Support – The Parent alleged the District, during the 2021–2022 school year, did not implement those portions of the Student's individualized education program (IEP) that related to the provision of a 1:1 paraeducator.

A district must provide 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.

September 9 through November 16, 2021

Here, the June 2021 IEP provided the Student with the following specially designed instruction each week: 3.5 hours of social behavior and 5 hours of cognitive.¹²

¹² Under the June 2021 IEP, 60 minutes of specially designed instruction in social behavior was supposed to be implemented in a *special education setting*, and here, most all specially designed instruction was provided in a *general education setting*. In its response, the District noted: "from a review of correspondence, it appears that specially designed instruction in the *general education setting* was the intent of the full team, including the Parent, who did not want Student served in the resource classroom except for limited

In relation to when the Student was provided with specially designed instruction during the 2021–2022 school year, several documents were provided to OSPI that spoke to this issue, and oftentimes, these documents contradicted each other. In fact: the general education teacher acknowledged, ‘schedules were changing a lot’; the paraeducator noted her regularly-scheduled time with the Student was occasionally interrupted; and, the District acknowledged there were “variations [in] the schedule” throughout the year.

As best OSPI can determine, after reviewing the different scheduling documentation, from September 3 through November 16, 2021:

- Special education teacher 1 worked with the Student for on average, approximately 18 minutes each morning on specially designed instruction in social behavior¹³;
- Later in the morning, the paraeducator provided the Student with specially designed instruction in both social behavior and cognitive for a total of 50 to 90 minutes.¹⁴
 - Therefore, the paraeducator would have been providing the Student with approximately 25 to 45 minutes of specially designed instruction in social behavior each day, and approximately 25 to 45 minutes of specially designed instruction in cognitive each day.¹⁵

circumstances ([for example], assessments).” During this investigation, OSPI did not find correspondence that contradicted this position, and with the November 2021 amended IEP, all specially designed instruction was to thenceforth be provided in a *general education setting*. For these reasons, OSPI does not find a material IEP implementation failure on this point.

¹³ The general education teacher stated these sessions lasted approximately 15 to 20 minutes, and the schedule created by the District (and included in its response) had special education teacher 1 working with the Student for 25 minutes.

¹⁴ The paraeducator worked with the Student around lunch time, recess, and transition to work time (90 minutes; although, this time was reduced to about 50 minutes as the Student made progress.

¹⁵ There is also some evidence that the paraeducator, at least on occasion, provided the Student with specially designed instruction in the afternoon—though OSPI cannot make a conclusive determination on this point. For example: on September 14, 2021, special education teacher 1 created a chart that showed, in part, the paraeducator worked with the Student from 3 to 3:30 in the afternoon; and during his interview with OSPI’s investigator, the general education teacher stated the paraeducator would occasionally return to the classroom to work with the Student later in the day—particularly if the paraeducator had been ‘pulled away’ from her regularly-scheduled time with the Student earlier in the day. But during her interview with OSPI’s investigator, the paraeducator did not mention working with the Student in the afternoon.

- After his morning session with the Student, special education teacher 1 worked with the Student on specially designed instruction in both social behavior and cognitive for an additional, approximate 25 minutes.^{16 17}
 - Therefore, during this second period of time with the Student, special education teacher 1 would have been providing the Student with approximately 13 minutes of specially designed instruction in social behavior, and approximately 13 minutes of specially designed instruction in cognitive.

In total, then, under this schedule, the Student received approximately 56 to 76 minutes of specially designed instruction in social behavior each day (4.5–6.5 hours per week), and approximately 38 to 58 minutes of specially designed instruction in cognitive each day (3–5 hours a week).

For social behavior, then, this schedule would have permitted the Student to access the relevant specially designed instruction, as included in the June 2021 IEP—3.5 hours each week. For cognitive, though, there were likely weeks wherein the Student did not receive the total amount of specially designed instruction required by the June 2021 IEP. For example: the June 2021 IEP provided the Student with 5 hours of specially designed instruction in cognitive each week, and here, the Student received approximately three to 5 hours of cognitive each week. This, therefore, represents a material failure to implement the IEP.

A state educational agency is authorized to order compensatory education, as appropriate, through the special education community complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place and aims to place the student in the same position he or she would have been, but for the district’s violations of the IDEA.

The following factor is relevant in determining whether compensatory education is appropriate, and if so, how much compensatory education is appropriate: even with a material IEP implementation, how much progress, if any, was the student able to make on his or her IEP goals?

Here, the November 15, 2021 progress report noted the Student had made significant progress on **cognitive – preacademic 2–3**. Additionally, on October 18, 2021, special education teacher 1 reported the Student was progress well on **cognitive – preacademic 2**. Accordingly,

¹⁶ On September 14, 2021, special education teacher 1 created a chart that showed he worked with the Student from approximately 10:40 to 11:10 am; an October 1, 2021 email from special education teacher 1 showed he worked with the Student from 10:17 to 10:40 am (“Student transition to lunch”); and the schedule created by the District for its response has special education teacher 1 working with the Student again, later in the morning, for 25 minutes. (Though, OSPI acknowledges that during his interview, the general education teacher stated it was difficult for him to recall whether special education teacher 1 returned to the classroom after working with the Student during the morning session.)

¹⁷ The schedule created by the District for its response stated all of this time was spent on specially designed instruction in social behavior, but emails dated October 11 and 18, 2021 showed at least some of this time was spent on specially designed instruction in cognitive.

compensatory education is only warranted for **cognitive – preacademic 1**—for which the November 15, 2021 progress report and special education teacher 1’s October 18, 2021 report noted the Student had made “little or no progress.”

September 9 through November 16, 2021 represents approximately 9.5 weeks of instruction. If, during approximately half of these weeks the Student was not provided 1 hour of specially designed instruction in cognitive – preacademic that he should have been provided¹⁸, the Student would have missed 4.75 hours of specially designed instruction in cognitive – preacademic.

There is no requirement to provide day-for-day compensation for time missed. 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. Accordingly, as compensatory education for the period of September 9 through November 16, 2021, the District will be required to provide the Student with 2.5 hours of one-on-one specially designed instruction in cognitive – preacademic, focused on goal 1.

November 17 through December 17, 2021

On November 15, 2021, the Student’s IEP team amended the June 2021 IEP, to be implemented beginning November 17, 2021. The November 2021 amended IEP provided the following specially designed instruction to the Student each week: 3.3 hours of social behavior and 2.5 hours of cognitive.

From November 17 through December 17, 2021, the Student’s schedule remained the same. In other words, the Student continued to receive weekly: approximately 4.5 to 6.5 hours of specially designed instruction in social behavior and approximately 3 to 5 hours of specially designed instruction in cognitive.

During this time, then, the Student’s schedule permitted the Student to receive the specially designed instruction in the November 2021 amended IEP. In fact, during this time, the Student likely received more specially designed instruction in social behavior and cognitive than was included in the November 2021 amended IEP. Therefore, OSPI finds no violation for this time period.

January 3 through May 5, 2022

Starting with the spring 2022 semester, the Student’s schedule changed in two notable ways: a special education teacher no longer worked with the Student in the general education classroom and the paraeducator was not present—on a consistent basis, at least—in either the mornings or during lunch and recess.

¹⁸ Again, at least on some weeks, it appears the Student missed anywhere from several minutes to up to two hours of specially designed instruction in cognitive – preacademic—so one hour represents what would likely have been the average time missed on those weeks wherein less than five hours of specially designed instruction in cognitive – preacademic was provided to the Student.

The paraeducator stated, though, 'I was still there for the 11:10–12 transition to work time [after lunch and recess] 85–95% of the time.' In other words, during this time, the paraeducator provided the Student with **some form of instruction** in both social behavior and cognitive, for a total of 50 minutes each day.

By way of explanation, it is not clear special education teacher 2 designed and supervised the provision of specially designed instruction to the Student in the spring of 2022. For example, in part: the paraeducator stated she did not have a detailed conversation with special education teacher 2 in the spring of 2022 as to what specially designed instruction for this Student looked like; in a February 1, 2022 email thread, special education teacher 2 expressed confusion as to whether the Student was receiving specially designed instruction in cognitive/pre-academic; in a March 8, 2022 email, special education teacher 2 appears to ask the general education teacher for an update on the Student's performance in the Student's cognitive/preacademic goals areas—as well as ask the general education teacher "how many hours does paraeducator work with Student?"; and in a March 29, 2022 email, special education teacher 2 expressed surprise at discovering the paraeducator's schedule with the Student had been changed (at some time previous to March 29, 2022).

This is highly problematic as a paraeducator can provide special education, so long as the provision is designed by, and under the supervision of, a certificated teacher with a special education endorsement. Additionally, student progress must be monitored and evaluated by special education certified staff. (And, specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction, to address the unique needs of the student that result from the student's disability, and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.)

OSPI does acknowledge, though, the paraeducator stated she did have an extensive conversation with special education teacher 1 in the fall of 2021 about what specially designed instruction for this Student looked like, and it appears the IEP goals in the spring of 2022 were the same as those applicable to the latter part of fall 2021. In other words, special education teacher 1's fall 2021 conversations regarding the design and supervision of specially designed instruction likely had a continuing impact on the paraeducator's provision of specially designed instruction to the Student in the spring of 2022.

As stated above, it appears the paraeducator provided the Student with **some form of instruction** in both social behavior and cognitive, for a total of 50 minutes each day—and that this was the total amount of instruction the Student received. This would have been approximately 25 minutes of specially designed instruction in each topic each day (2 hours per week).

This represents a material failure to implement the IEP. The November 2021 amended IEP required the following specially designed instruction to the Student each week: 3.3 hours of social behavior and 2.5 hours of cognitive. In other words, during this time, it appears the Student missed, at a minimum, approximately 1.3 hours of specially designed instruction in social behavior and 30 minutes of specially designed instruction in cognitive each week.

It appears the schedule change was first initiated on January 3, 2022 and continued until approximately May 5, 2022.¹⁹ January 3 through May 5, 2022 represents approximately 16 weeks of instruction. Therefore, during this time, the Student missed approximately 21 hours of social behavior and 8 hours of cognitive.

Specifically, OSPI notes there is limited evidence the Student received specially designed instruction in **cognitive – preacademic 2** during this time period. For example, the paraeducator stated she did not provide the Student with any math instruction during the first part of the spring 2022 semester, and as stated above, the paraeducator stated she did not have a detailed conversation with special education teacher 2 in the spring of 2022 as to what specially designed instruction for this Student looked like.

In determining the appropriate level of compensatory education, it is important to consider the Student's progress. Here, it is significant that overall, the Student did continue to make some progress on all of his goals in the spring of 2022. At the same time, though: the mid-March 2022 progress report noted the Student experienced a slowing of the speed with which he had been making progress on **cognitive – preacademic 2** and **3**; the early June 2022 progress report noted the Student experienced a slowing of the speed with which he had been making progress on **social/behavior 1** and **4**; and both the paraeducator and general education teacher noted a regression in the Student's social/behavior skills in spring 2022.

Accordingly, as compensatory education for the period of January 3 through May 5, 2022, the District will be required to provide the Student with approximately 2/3 of the time missed: 14 hours of one-on-one specially designed instruction in social behavior and 6 hours of one-on-one specially designed instruction in cognitive – preacademic.

Additionally, as noted above, special education teacher 2 did not appear to be designing, supervising, and monitoring the specially designed instruction the paraeducator was delivering. OSPI finds a violation on this point and the District will be required to conduct a training on this topic.

May 6 through June 17, 2022

As best OSPI can tell, beginning on or about May 6, 2022 and continuing through the end of the school year, the paraeducator began working with the Student in the morning, and resumed working with the Student for lunch, recess, and the transition to academic work. As detailed above, it appears the paraeducator worked with the Student for approximately 18 minutes each morning on instruction in social behavior, for approximately 45 minutes each midday (lunch, recess, and

¹⁹ OSPI notes that there were communications on March 9 and April 1, 2022, stating the paraeducator would start to work with the Student in the morning and during lunch and recess again, but there are communications and documents, dated April 4 and May 4, 2022, that show that change was likely not made until after May 5, 2022. Additionally, in her interview with OSPI's investigator, the paraeducator stated it was likely around the end of April/beginning of May that she started working with the Student at recess, lunch, and in the morning.

the transition back to academic work) on instruction in social behavior, and for approximately 45 minutes each midday on instruction in cognitive/pre-academic.

The weekly totals, then, would have been approximately 5 hours of instruction in social behavior; and, approximately 4 hours of instruction in cognitive/pre-academics. For the reasons discussed above, such a schedule would have permitted the Student to access **some** of the specially designed instruction included in the November 2021 IEP (3.3 hours of social behavior each week, and, 2.5 hours of cognitive each week), but likely not all of the **specially designed instruction** that was required.

May 6 through June 17, 2022 represents approximately six weeks of instruction. So, during this same period, the Student should have received approximately 20 hours of specially designed instruction in social behavior and 15 hours of specially designed instruction in cognitive.

Assuming the Student received approximately 1/3 of this time as specially designed instruction, the Student would have received approximately 7 hours of specially designed instruction in social behavior and 5 hours of specially designed instruction in cognitive.

For the reasons stated above, 2/3 of the amount of specially designed instruction that was missed is an appropriate remedy, and the District will be required to provide the Student with the following compensatory education: 8.5 hours of specially designed instruction in social behavior and 6 hours of specially designed instruction in cognitive.

CORRECTIVE ACTIONS

By or before **July 1, 2022, July 22, 2022, September 16, 2022, and October 28, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **July 1, 2022**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 14.5 hours of specially designed instruction in cognitive/pre-academics; and 22.5 hours of specially designed instruction in social behavior.

The District will provide OSPI with documentation of the schedule for services by or before **July 1, 2022**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks.

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 with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than September 30, 2022, including those needing to be rescheduled.*

No later than **October 28, 2022**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by 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 **October 28, 2022**.

DISTRICT SPECIFIC:

Training

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

1. Individuals that can provide specially designed instruction; individuals that must design and supervise provision of specially designed instruction (WAC 392-172A-02090(1)(h)-(i)); and,
2. Nature of specially designed instruction (WAC 392-172A-01175(2)(c)).

The training will include at least two examples and best practices for collaboration between certificated staff and paraeducators.

The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 121 staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 22-44.

By or before **July 1, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **July 22, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by July 29, 2022.

By **September 16, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 16, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ____ day of June, 2022

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)