

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-67

PROCEDURAL HISTORY

On May 31, 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 Clover Park 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 June 2, 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 June 17, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on June 23, 2022. OSPI invited the Parent to reply.

On July 6, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 12, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 1, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow proper procedures for implementing the Student's individualized education program (IEP) during the 2021–2022 school year?
2. Did the District follow proper reevaluation and IEP development timelines in the spring of 2022?

LEGAL STANDARDS

Reevaluation Procedures: A reevaluation of a student eligible for special education services must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2).

IEP Implementation: Each district must 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning. 34 CFR §300.324; WAC 392-172A-03110. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement, or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). Compensatory education is

not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1st Cir. 2003). "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.

Parent Request for IEP Meeting: 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). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. 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).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which parents (1) provide critical information regarding the strengths of their child and express concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum, and what services will be provided to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, Question 9).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the

parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities and providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP, the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

FINDINGS OF FACT

Background

1. The Student was eligible for special education services under the category of autism and attended a District middle school virtual program.
2. The Student's most recent reevaluation was completed in December of 2020 and identified the Student's educational needs, which included specially designed instruction to support the development of the Student's communication, social/emotional, reading, math, and written expression.
3. The Student's January 2021 individualized education program (IEP) indicated that the Student's communication needs required speech and language related services and that the Student did not "require any assistive technology devices and services at this time." Additionally, the IEP stated that his "behaviors are being addressed in his self contained classroom through the use of token system and positive reinforcement" and that "[h]e does not require a behavior intervention plan at this time."

The January 2021 IEP directed that the Student receive special education services to improve his social emotional skills, math, reading, and writing academic skills, and communication skills. Annual goals in the Student's IEP targeted:

- Compliance with verbal directions to improve social skills.
- Requesting a break to improve overall social skills.
- Accurately solving double digit multiplication problems and single digit division problems to improve overall math skills.

- Writing complete sentences using adjectives, adverb, noun, prepositional phrases, and verb to improve expressive language skills.
- Correctly answering reading comprehension questions on 3rd grade level reading passages and reading fluently at 3rd grade level to improve reading skills.
- Producing grammatically correct simple sentence responses with subject verb agreement improving communication skills.
- Demonstrating problem solving skills when given various scenarios of social conflicts to improve pragmatic social skills.
- Producing /l/ in all positions of the word in sentences and initial/medial /v/ and final /f/ in single words to improve articulation skills.

Progress reporting on the goals was to be provided quarterly. For the 2021–2022 school year through January 12, 2022, the Student was to receive 1,180 minutes weekly of special education services. None of the services minutes were to be provided concurrently and the following weekly service minutes were to be provided:

- Speech: 30 minutes provided by a speech language pathologist (SLP)
- Math: 250 minutes provided by special education staff monitored by a special education teacher
- Math: 150 minutes provided by special education staff monitored by a special education teacher
- Reading: 250 minutes provided by special education staff monitored by a special education teacher
- Reading: 150 minutes provided by special education staff monitored by a special education teacher
- Written Expression: 150 minutes provided by special education staff monitored by a special education teacher
- Communication: 50 minutes provided by a special education teacher
- Social/Emotional: 150 minutes provided by a special education teacher

The IEP indicated that the Student was to receive his services in a special education setting, attending a regular class setting for less than 40% of his school day.

4. The District issued a prior written notice on January 13, 2021. In describing “other options considered and rejected,” the District stated that the IEP team rejected in-person services offered and accepted virtual learning as the Student’s placement. The prior written notice documented that the Student had been placed in a resource setting for his previous IEP and they would revisit the decision, but did not identify a timeframe. The prior written notice also stated that “more time in general education” was rejected by the IEP team, however, the team “will review when whole school in person services are available”.

2021–2022 School Year

5. The District’s first day of school for the 2021–2022 school year was September 1, 2021.
6. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of autism, was in the 6th grade and, at the Parent’s election, attended a District middle school virtual program, and his January 15, 2021 IEP was in effect.

7. Email communications between the Parent and the District indicated that the Parent emailed with various District personnel in September, October, and early November of 2021, requesting a computer for the Student to access his virtual program.
8. The District special education supervisor (supervisor) submitted a declaration as part of the District response to this complaint. The supervisor explained that “[f]or the 2021-2022 school year, all parents within the District, including parents of children with special needs, had the option of choosing in-person instruction or virtual instruction.”

The supervisor’s declaration stated the District had utilized a contractor for its online school for the 2021–2022 school year; however, the District learned of problems with the contractor providing hardware (laptops, chromebooks, iPads and/or hot spots for learning) and providing instruction. The supervisor stated that the “District retook control of the special education instruction of its virtual students” from the contractor and then issued computers and software to its students. The supervisor’s declaration confirmed that the Student received a computer on November 9, 2021, which, according to the District 2021–2022 school year calendar, is the 48th day of instruction.

Specific to this Student’s experience, the supervisor stated that prior to November 9, 2021, the “lack of hardware impacted the Student’s receipt of services” and that two District special education teachers were assigned as the Student’s special education teachers. The supervisor’s declaration explained that “online services are a most intensive provision of services as the classes have a smaller adult/student ratio and all services are delivered directly by the special education teacher or therapists [and that] Student’s online schedule from September 2021 to February 2022 consisted of English instruction in the morning and Math in the afternoon,” with each session lasting 60 minutes.

9. The Parent recalled that speech therapy began on November 17, 2021. The SLP records confirmed this date as the first therapy session. These records indicated that the Student was not provided 10 therapy sessions between September 1 and November 17, 2021.
10. There are no academic service records or attendance records for the Student from November 9, 2021 through February 1, 2022. The supervisor indicated that during the Student’s English language arts (ELA) 60-minute session, the Student’s special education teacher supplemented ELA instruction with social emotional stories and learning videos. He also stated that the Student did not regularly attend his afternoon sessions (math instruction).
11. The District provided attendance records from the Student’s special education teacher beginning February 2, 2022, detailing attendance and log in times for the remaining 88 days of the school year. The teacher indicated that each scheduled day resulted in 2:40 (two hours and 40 minutes) of virtual class time. The following additional information is available from these documents titled “attendance records”:

- Between February 2 and May 2, 2022, the Student was marked "absent" 33 of 88¹ days.
- Between February 2 and May 2, 2022, the Student was marked "attended" 28 of 88 days.
- The remainder of the school days, an additional 28 days, are identified with a "log in time," which was explained by the special education teacher who stated that any log in times "that are close to 2:40:00, are days when he attended both morning and afternoon class". Six of the remaining 28 days have log in times close to the 2:40:00 anticipated log in time, 27 days have log in times less than the expected log in time or considerably longer log in times. The teacher stated the Student does not come on camera when he attends and "when called upon during class, several times per class period, it became clear that [Student] was not attending the class. This skews the actual attendance due to instructor not being able to communicate and confirm actual attendance".
- The teacher additionally noted that during six of the sessions, the Student's log in time exceeded the assigned class time. The teacher concluded that these sessions are "sessions where [Student] did not attend while logged in. This is known because he forgot to get back on and log off at the end of class."
- The sum of days marked absent and those with questionable log in times are documented as 39 days absent from instruction, a percentage of 44.8% of the days offered virtual class from February through June of 2022.

12. Two SLPs (SLP 1 and 2) provided services to the Student during the 2021–2022 school year. SLP records indicated that:

- SLP 1 documented that the Student received 10 therapy sessions between November 17, 2021 and February 8, 2022. Two additional sessions had been scheduled, and the Student did not attend one due to illness and the other because his computer was not working.
- SLP 2 documented that she scheduled 18 therapy sessions for the Student between February 9 and June 10, 2022. Service minute notes indicated that the Student attended 11 of these sessions. The service minute notes also indicated that the Student was late to multiple sessions or could not complete the multiple sessions because of technology issues noted with Student's computer or access issues.

13. The Student's IEP team was scheduled to meet on January 14, 2022, to complete an annual review of the IEP. District documents indicated that the Parent was notified of the meeting on December 7, 2021. The supervisor's declaration indicated that the team developed new goals for the Student at this meeting.

14. The Parent's written reply to the District's response stated that she did not attend the January 14, 2022 meeting. She stated that the meeting had been scheduled for 9 am and that the special education teacher called her later that day at 1 pm. The Parent indicated that the conversation lasted about 15 minutes and the special education teacher stated he had been out of the office that morning and he had a few colleagues look at the IEP. The Parent reported that the teacher stated he "copied and pasted last year's IEP and goals to this current IEP".

15. The January 2022 IEP indicated:

¹ There is a notation that class was canceled one day on May 5, 2022, as a result of a password deletion at the District level. The following day, May 6, 2022, was a shortened session due to the password issue and the Student attended that day.

- The January 2022 IEP included the same special factor considerations, same goals and objectives, and does not include updated present levels. The services and placement determination are the same as those in the January 2021 IEP.
 - The January 12, 2022 prior written notice stated, "that the District considered rescheduling the meeting until more team members could attend but decided to move forward with the meeting with the understanding that another IEP meeting could be scheduled in the near future if requested" and that the "meeting was held to stay within the deadline of the IEP due date."
 - The prior written notice also confirmed that "[d]ue to the lack of attendance during the 2021–22 school year, the goals, accommodations, service matrix and LRE remained the same" and that Student "has not attended school for the majority of the school year due to Covid concerns and tech issues."
16. Email correspondence confirmed that the Parent wrote to the Student's special education teacher on January 24, 2022, "refusing this year's IEP and requesting a meeting" with the special education teacher, school principal, and the superintendent of special education. Later that afternoon, the special education teacher emailed the Parent to advise "I understand your concerns and suggest having a meeting as soon as we can." The teacher also explained that he was no longer the Student's special education teacher but he "would suggest scheduling a new IEP meeting" with the new special education teacher and District staff.
17. The District's special services director (director) was copied on the January 24, 2022 email and replied to the Parent and the supervisor to "work with [the new special education teacher] to schedule a meeting with [Parent] regarding her concerns with the current IEP."
18. The District did not provide a quarterly progress report on the January 2021 IEP goals. A progress report referencing the January 2021 goals was completed on January 24, 2022. According to this progress report, the Student made no progress on goals in math. The report stated there had been insufficient time to implement goals in social emotional, communication, expressive language, reading, and written expression because they were new goals for the Student. The SLP did not issue a progress report in January 2022.
19. Email correspondence, dated February 3, 2022, between the new special education teacher and Parent, included a description of the Student's performance in the afternoon session, encouragement for the Student to attend the morning and afternoon sessions, as well as his availability to speak with the Parent. The email did not include an offer of an IEP team meeting or a meeting with him and the school staff as requested by the Parent. A separate email correspondence from the supervisor, dated February 3, 2022, suggested that the new special education teacher "complete a new IEP in the near future."
20. Email correspondence, dated February 7, 2022, from the Student's special education teacher indicated the intent "to spend about a month with him in order to get some baseline data or determine where he is right now with his academics" and "then schedule an IEP meeting before the end of March." The teacher also stated, "[i]f this is agreeable to you, I will schedule some one on one time for [Student] and I to get some assessments done." He also offered that he could stay online with the Student after the morning session "to complete the testing." The teacher asked if this "was agreeable" to the Parent.

21. On March 31, 2022, the SLP completed a progress report that indicated the Student had made some progress on his speech goals. No progress notations regarding the Student's other goals, to be implemented by special education staff, were included in the document.
22. The Parent reported that the District did not convene a new IEP meeting during the remainder of the school year nor was an evaluation scheduled. Email correspondence, dated May 23, 2022, documented the Parent requesting "an IEP Evaluation and meeting to discuss both Recovery and Compensatory Education, as well as a copy of the latest IEP and Evaluation." The Parent asserted she was not contacted until June 15, 2022 and that no meetings occurred in response to her request.
23. The supervisor's declaration does not indicate the IEP team was convened at any time after January 12, 2022. The District did not provide a prior written notice in response to the Parent's request on May 23, 2022, or any documentation of a new evaluation or IEP meeting being offered after January 12, 2022.
24. A progress report was completed on June 15, 2022, that indicated:
 - The Student mastered goals in social emotional skills (following directions), expressive language skills, and articulation skills;
 - The Student made sufficient progress in social emotional skills (requesting breaks), reading, and communication skills;
 - The Student made no progress in math (division); and,
 - The Student made minimal progress in math (multiplication) and written expression.
25. The District's response indicated that the Parent had been offered an evaluation and compensatory education.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the Student was denied a free appropriate public education (FAPE) because he was not provided all of the special education services required in his individualized education program (IEP). Regardless of whether a district utilizes its own staff or hires a qualified contractor, it 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.

Here, the Student's IEP team in January of 2021 determined that he was to receive 1,180 service minutes each week, including services in the areas of articulation, communication, expressive/receptive language, math, social emotional, reading, and written expression. The January 15, 2021 IEP specifically indicated that the services were to be provided through a virtual program. For example, the prior written notice included that the IEP team rejected in-person services offered and accepted virtual learning. The Student's January 2022 IEP repeated all of the

same goals and service provisions, in a manner described in the prior written notice as a "cut and paste" from the prior year's IEP.

During the 2021–2022 school year, the Student's time can be divided into three distinct periods, each reflecting a different team of professionals assigned to provide him his special education services. As noted below, each of the time periods fell short of implementing the entirety of the Student's IEP, and given the difference between minutes scheduled and minutes directed by the IEP, none of these periods reflect a minor discrepancy. Thus, OSPI finds a violation.

Period One – September 1 through November 9, 2021: During this period, the Student was to be provided access to education and special education services from a District contractor. The parties agreed and the documentation supports that the Student received no services from September 1 through November 9, 2021, when he received a computer from the District to begin accessing instruction. This period reflects the first 48 school days, approximately 9.5 weeks of instruction. The parties also agreed that the Student did not receive speech therapy for the first 10 weeks of the school year. Failing to implement the IEP at all during this period of time denied the Student a FAPE and meant the Student missed approximately 63 hours of math instruction, 63 hours of reading instruction, 24 hours of writing instruction, 8 hours of communication instruction, 24 hours of social emotional instruction, and 5 hours of speech services. There is no requirement to provide minute-for-minute compensatory education. Here, though, at least part of the compensatory education will be provided in a 1:1 setting, and generally, services delivered on a 1:1 basis are delivered effectively in less time than if the services were provided in a classroom setting. Thus, OSPI finds 75% of the missed time to be an equitable remedy. The District will be required to provide 48 hours of math, 48 hours of reading, 18 hours of writing, 6 hours of communication, 18 hours of social emotional, and 3.75 hours of speech services.

Period Two – November 10, 2021 through February 1, 2022: During this period, the Student was provided speech services; however, the absence of any records documenting the provision of special education services and given a progress report that indicated the Student did not make progress on the goals indicated that the remainder of the IEP services were not fully implemented. The Student may have received some instruction, but the evidence does not support that his IEP was materially implemented. This period reflects nearly eight weeks of school. The District supervisor explained the Student was scheduled to receive 300 minutes a week in reading and 300 minutes a week in math. As the IEP team stated that no service areas were to be provided concurrently, the Student did not receive—and his schedule did not permit him to receive—100 minutes per week of reading and 100 minutes of math. He also did not receive instruction in writing, social emotional, or communication, totaling approximately 14 hours of reading, 14 hours of math, 20 hours of writing, 20 hours of social emotional, and 4 hours of communication services. Similar to period one, as part of the compensatory education will be provided in a 1:1 setting, OSPI finds 50% of the missed time to be an equitable remedy here, given that the Student likely received some instruction, just not the full amount. Thus, the District will be required to provide an additional 7 hours of math instruction, 7 hours of reading instruction, 10 hours of writing instruction, 2 hours of communication instruction, and 10 hours of social emotional instruction.

Period Three: This period covers the remaining 88 days of the school year, approximately 17.5 weeks of instruction. The District provided documentation that the Student was scheduled for 2 hours and 40 minutes per day of instruction, the equivalent of 800 minutes per week, 380 minutes short of the amount of services the Student was to receive as required by his IEP, an amount totaling 110 hours over the course of period three. It is unclear how the Student's 800 minutes a week were to cover each of the Student's areas of service, so the District will be required to provide an equitable portion of services. While the Student received some amount of specially designed instruction during this period and made progress on or mastered several of his goals, it is a problem that the Student's schedule did not permit him to receive the full amount of specially designed instruction outlined in his IEP. As noted above, compensatory education will be provided in a 1:1 setting and OSPI finds 50% of the missed time to be an equitable remedy, or 55 hours of compensatory education. The District IEP team will confer with the Parent to determine how the 55 additional hours of compensatory education will be distributed.

Issue 2: IEP Development and Evaluation Procedures – The Parent alleged that the District failed to respond to her concerns about the Student's IEP, requests for IEP meetings, and requests for an evaluation.

The IEP team is required to convene annually to develop a new IEP for the Student. District staff are not permitted to create an IEP without the IEP team and bypass the IEP team process to meet a procedural timeline. Here, the Parent was invited to a meeting which did not occur and the prior written notice and email correspondence indicated the teacher's decision to complete an IEP without the requisite team was made in order to meet a procedural timeline. When an IEP meeting was requested by the Parent, no such meeting was scheduled. If a district were to determine no IEP meeting was required, then a prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement, or the provision of a FAPE. In the alternative, the District was required to convene an IEP team to complete a procedurally adequate IEP for the Student and it did not do so.

Additionally, when a progress report is issued with a concern regarding the Student's progress, or the District is not able to implement any requirement of the Student's IEP, the District must consider scheduling an IEP meeting to review and perhaps revise the Student's IEP. It is clear that during the 2021–2022 school year, the District recognized the Student had not been provided special education services during period one and that the Student was not scheduled to receive the entirety of his IEP services during periods two and three as described above. Further, there appeared to be concerns about the Student attending classes and his ability to engage with remote learning that were not addressed. Each of these events should have triggered the District's responsibility to convene the Student's IEP team to review and perhaps revise his IEP. The records and email correspondence indicated that the District did not meet at any point during the 2021–2022 school year to create an annual IEP or review the Student's previous IEP.

Finally, when the Parent requested a reevaluation in May of 2022, the District was required to begin an evaluation or issue a prior written notice, explaining their refusal to do so. No such evaluation was conducted, nor was a prior written notice provided to the Parent.

Thus, OSPI finds a violation. The District will be required to conduct training on IEP meetings, IEP revision, prior written notice, and evaluation procedures. Additionally, the District will be required to hold an IEP meeting with a properly constituted IEP team for the Student to determine whether a reevaluation is needed and to update the Student's IEP as appropriate.

CORRECTIVE ACTIONS

By or before **August 25, 2022, September 9, 2022, September 16, 2022, October 3, 2022, October 28, 2022, January 30, 2023, April 3, 2023, and July 21, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Team Meeting

By or before **September 2, 2022**, the District will convene a properly constituted IEP team, meaning an IEP team with all of the members required by Washington state regulations, including the Parent. The IEP team should discuss the following, at minimum:

- Review and revise the Student's IEP to ensure he is receiving specially designed instruction within his least restrictive environment.
- Determine whether an evaluation of the Student is required for him to receive a FAPE.

By or before **September 9, 2022**, the District will provide OSPI a copy of the following: 1) a copy of the meeting notice and/or invitation for the IEP meeting; 2) the prior written notice regarding decisions made at the meeting; and 3) a copy of the Student's IEP if it has been revised. OSPI will review the prior written notice and determine if additional documentation deadlines are required to monitor the implementation of any decisions made by the IEP team.

Compensatory Education

By or before **August 19, 2022**, the District and Parent will develop a schedule for the following hours of compensatory education.

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| • Reading: 55 hours | • Communication Skill: 8 hours |
| • Math: 55 hours | • Speech: 3.75 hours |
| • Written Expression: 28 hours | • Allocation of the additional 55 hours of compensatory education |
| • Social Emotional Skill: 28 hours | |

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 District will provide OSPI with documentation of the schedule for services by or before **August 25, 2022**.

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 **July 14, 2023**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **October 3, 2022, January 30, 2023, and April 3, 2023** 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 **July 21, 2023**, 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 **July 21, 2023**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 22-67.

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

- The requirement to convene a student's IEP team if the District team is unable to implement a student's IEP and when the circumstances warrant review of an IEP prior to an annual review due date.
- Annual review timelines and requirements to include parents in the development of an IEP.
- IEP team procedures to response to parent requests for an IEP team meetings.
- Evaluation procedures to utilize to respond to parent requests for an evaluation.
- Progress reporting requirements.
- Requirements of when a prior written notice must be provided to a parent.

The training will include examples.

By or before **August 25, 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 **September 16, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 30, 2022.

By **October 21, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 28, 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 July, 2022

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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