

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-01

PROCEDURAL HISTORY

On January 7, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from a complainant (Complainant) regarding a student (Student) attending the Seattle School District (District). The Complainant 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 January 7, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On January 14, 2022, the District requested an extension of time for the submission of its response. That same day, OSPI granted the District an extension, giving the District until January 28, 2022 to submit its response.

On January 26 and 28, 2022, OSPI received the District's response to the complaint and forwarded it to the Complainant on February 2, 2022. OSPI invited the Complainant to reply.

On February 14, 2022, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on February 17, 2022.

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

SCOPE OF INVESTIGATION

Any information included from events prior to the fall of 2021 is mentioned for informative, background purposes only.

ISSUES

1. During the fall 2021 semester, did the District follow proper individualized education program (IEP) development procedures—specifically—did the District respond to any need resulting from the Student's disability in the following areas:
 - a. Elopement concerns; and,
 - b. Transition challenges and/or transportation needs related to the Student's arrival at school?¹

¹ In reviewing the documentation provided to OSPI during the investigation, it appears the issue concerning the Student's transportation and transition needs as it related to the Student's arrival was one of IEP implementation, not development. For example, it does not appear the Student's IEP team determined the Student's needs in relation to school drop off changed throughout the semester. Rather, it was determined prior to the start of the school that the Student needed to be met by a District staff person when his

2. During the fall 2021 semester, did the District properly implement those provisions of the Student's IEP that related to 1:1 paraeducator support?

LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(3)(g); *see also, generally,* WAC 392-172A-03090.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. 34 CFR §300.324; WAC 392-172A-03110.

Functional Behavioral Assessment: A functional behavior assessment (FBA) focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting

specialized transportation dropped him off at school in the morning, and the dispute between the parties principally concerned whether the District properly provided this support throughout the 2021–2022 school year.

several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

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

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

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).

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. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

IEP Must State Amount of Services: An IEP must include a statement of the services to be provided to a student, including whether a student requires specialized transportation. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Service Providers Must be Aware of Respective Responsibilities: Staff members responsible for providing services under an IEP must be made aware of their respective responsibilities. 34 CFR §300.324; WAC 392-172A-03110.

Districts' Discretion over Staffing: Generally speaking, districts have discretion in personnel decisions, such as staffing assignments or hiring. *Gellerman v. Calaveras Unified Sch. Dist.*, 37 IDELR 125 (9th Cir. 2002); *see also, In the Matter of the Clover Park School District*, OSPI Cause No. 2004-SE-0072X (WA SEA 2004); *In re Los Altos Elementary School District*, 38 IDELR 111 (CA SEA 2002); *In re Freeport School District*, 34 IDELR 104 (IL SEA 2000).

FINDINGS OF FACT

Summer 2021

1. On August 30, 2021, a District program specialist emailed the Complainant and stated, "American Logistics Company (ALC) would be providing Student's transport and that it had been notified to 'coordinate with school staff to make sure an adult meets Student due to history of elopement.'"
2. In an email to the program specialist on August 31, 2021, the Complainant stated, "Student needs a permanent full-time 1:1 [instructional assistant (IA)], not a temporary substitute for who knows how long."

2021–2022 School Year

3. The District's first day of school was September 1, 2021.
4. 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 tenth grade, and attended a District high school. At that time, the Student's February 2021 individualized education program (IEP) was in effect.

The February 2021 IEP provided the Student, in part, with the following: 30 minutes/week of social/behavior specially designed instruction in the general education setting; 210 minutes/week of social/behavior specially designed instruction in the special education

setting; functionally, a 1:1 instructional assistant for the entirety of the school day²; and, 30 minutes 6 times a week of specially designed instruction in study/organization skills.

According to the District:

The February 2021 IEP explains that Student 'requires frequent and immediate reinforcement, redirection, and monitoring that cannot be given by a general education teacher or a general [IA]. His diagnosis of autism makes it difficult for Student to receive feedback and directions from multiple adults and he benefits from having a consistent person to rely on while navigating in the classroom environment and socially with his peers. The 1:1 IA also provides his specially designed instruction in Social/Behavior and Study Organization when Student is in the general education setting. Additionally, the 1:1 IA supports him when he is with the [speech language pathologist] SLP in order to help Student generalize the skills he learns with the SLP. Without frequent and immediate reinforcement, redirection, and monitoring Student will withdraw and disengage from the classroom. The 1:1 IA provides this support for Student every day across all classrooms. Re-directions are needed on average about 5-10 times per class period.³

Student also receives special transportation pursuant to his IEP. The District contracts with American Logistics Company (ALC) for Student's door-to-door service.

The February 2021 IEP further read, in part:

As the classroom content continues to increase in difficulties, Student relies even more on the 1:1 consistent and familiar paraeducator to support him in the classroom.

...

Student's social communication deficit leads him to have difficulties with his consistent use of social communication norms such as demonstrating appropriate listening behaviors, self-regulation, responding to others appropriately, use of appropriate humor, etc. These issues cause Student to appear inappropriate in many conversational situations leading to communication breakdowns and social isolation. They also interfere with Student's ability to adequately participate in academic discussions and peer group work.

...

Student is adversely impacted in social behavior, demonstrating difficulties in maintaining engagement in virtual classes, struggling to adapt appropriately to changes in routines.

...

Student is adversely impacted in the area of study/organization, struggling to initiate, follow through, and complete assignments. Additionally, he is adversely impacted with difficulties around sustaining attention and planning for longer assignments.

The February 2021 IEP provided the Student, in part, with the following accommodations: all required assignments, including homework, [to] be completed at school with IA support (daily [in the] *general education setting*); and, inform the Student prior to transitions and/or change in routine (daily and during testing across all settings).

² 233 minutes each week in the *special education setting* and 1,742 minutes each week in the *general education setting*.

³ The Student's February 2021 IEP included the language quoted in the District's response.

The February 2021 IEP provided the Student, in part, with the following modifications: positive reinforcement for appropriate behaviors; check-ins with teachers and/or IA; multiple redirections; and, design course schedule to alternate preferred/non-preferred core subjects.

The February 2021 IEP stated the Student required specialized transportation.⁴

5. According to the Complainant's complaint request:

[T]he school violated special education requirements [in part] by: not providing a consistent, full time 1:1 instructional aide beginning 9/1/2021. He has had 5 different temporary 1:1 IAs since then...failing to consistently have staff meet Student upon arrival at the school...failing to keep Student safe during 5 incidents of elopement without supervision by an IA, one of which resulted in Student being off campus for 75 minutes wandering around the neighborhood...the transportation dept failing to communicate with the school and car service to ensure safe transport in compliance with the IEP.

The Complainant's reply stated, in part: "The lack of a consistent person to provide 1:1 paraeducator support contributed greatly to [Student's increasing elopement challenges as the 2021-2022 school year progressed]."

6. According to the District's response, on two days in September 2021, the Student demonstrated a challenge with engaging in his media arts class.

7. According to the Complainant: the Student's spring 2021 paraeducator (**paraeducator 1**) was on break from the start of the school year until November 1, 2021; starting September 2, 2021, the District had a new individual fill the role of 1:1 paraeducator for the Student (**paraeducator 2**)⁵; and, when **paraeducator 2** was occasionally absent, **paraeducator 3** would fill in.⁶

According to the Complainant: "**Paraeducator 2** worked well with Student, met him at the car in the morning, and in general things were going pretty well"; and, the lack of a consistent 1:1 paraeducator throughout the fall of 2021 had a negative impact on the Student.

8. On September 1, 2021, according to the Complainant and as documented in a September 2 email from the Complainant to the special education teacher:

Student was dropped off in the wrong place by the car service and he was not met by staff, his whereabouts were unknown for an unspecified amount of time [and later that day]

⁴ The Student's IEP team also developed a behavioral intervention plan (BIP) for the Student in February 2021. The February 2021 BIP attempted to address the Student's difficulty in "engaging in partner or group activities" and "initiat[ing] and complet[ing] tasks in academic settings." Interventions included, in part: access to preferred peer; an adult to "model appropriate group work behavior and provide support for Student in group work settings"; and, verbal praise when appropriate behavior demonstrated.

⁵ The District's response included documentation that **paraeducator 2** accepted the offer to be the Student's 1:1 paraeducator on August 31, 2021 and her first day was September 2, 2021.

⁶ The District's response stated: the special education teacher "also arranged for coverage when **paraeducator 2** required her breaks – utilizing the Access IAs and [two other] special education teachers."

Student left class and 1:1 paraeducator did not follow him – he went outside and his whereabouts were unknown for approximately 10 minutes.

According to the District and as documented in emails discussing transportation:

On September 1, 2021, there was confusion surrounding Student's transportation and he was dropped off at a different drop-off spot at [the high school], causing a safety concern. The team immediately responded, but there was still confusion surrounding drop off on September 2, 2021. As such, on September 2, 2021, the assistant principal contacted the driver's supervisor at ALC to clarify the drop-off and pick-up responsibilities. The program specialist and special education supervisor also contacted the Complainant to discuss the issues.

On September 3, assistant principal, along with Student's 1:1 IA, met with the driver to further outline expectations. The driver was directed not to release Student until a staff member was present to greet Student, and to call the assistant principal if District staff were not present. The special education supervisor followed up on the issue on September 7, and by this point, the issue had been fully resolved.

[Separately] on September 3, the case manager met with **paraeducator 2** and the Complainant to discuss Student's needs and the 1:1 IA role and coverage plans.

9. On September 2, 2021, the Complainant emailed the assistant principal, stating, in part: This morning the driver dropped Student off [at a location near the school other than normal and] the driver let him out of the car and left [without staff present]. We need to establish a reserved place where the car service can drop off and pick up Student without having to complete for a parking space.

Later that day, the assistant principal responded, stating, in part:

Parking is a significant issue for our whole community, since we do not have our own parking lot on site, and we are surrounded by public city streets. We are limited in our capacity to reserve spaces beyond a single day. Given that reality, we are unable to provide a reserved place. I would love to try and see if drop off on [the] boulevard (right in front of the keys) can work...The special education teacher can work with the 1:1 to ensure she understands her responsibility to receive Student each morning.

In various emails dated September 2, 2021 between, in part, the Complainant, program specialist, and assistant principal, it was discussed that there were difficulties with communication with the ACL driver; the Complainant had previously told the driver's supervisor that the Student should not be let out of the car if a District staff person was not present at drop off; and, on or about September 2, 2021, the assistant principal spoke with the Student's driver and informed him of the foregoing drop-off requirements.

10. On September 3, 2021, **paraeducator 2** emailed the Complainant, stating, in part: "Yes, the special education teacher did speak with the driver during pickup. We established the pickup spot and introduced all 3 of us so things should go smoothly."

Other emails dated September 3, 2021 show: the assistant principal spoke with the driver again and "reiterate[d] the expectation that Student should only be dropped off if a staff member is

present"; the driver was provided with the assistant principal's phone number, to call in the event no staff member was present; and, the Complainant was informed of the drop-off location; and, in an email later on September 3, 2021, the Parent stated: "Drop-off went very well this morning!"

11. The District was on break September 6, 2021.
12. On September 14, 2021, the Complainant emailed the special education teacher, stating, in part: "I asked Student if he likes [**paraeducator 2**] and he replied in the affirmative."
13. On September 17, 2021, the Complainant emailed the attendance office, stating, in part: "Student is having difficulties in [the media arts' teacher's] class and he stayed with the special education teacher and his 1:1 IA during 4th period...his absence [from media arts] is IEP/disability-related."
14. On September 22, 2021, the special education teacher provided several District staff members a copy of the Student's February 2021 BIP.
15. According to the District: "On September 23, 2021, the Complainant notified the school that transportation was thirty minutes late. Transportation was alerted to the problem, and immediately remedied the issue. The District and [transportation company] reviewed the [relevant] records and adjusted the schedule as needed."
16. According to the District: "**Paraeducator 2** was absent during the week of September 23, 2021 and **paraeducator 3** was assigned to provide coverage as Student's 1:1 paraeducator. No issues or concerns were reported by the school or the Complainant."
17. On September 27, 2021, the transportation coordinator emailed the ALC driver company, stating, in part: Complainant stated the driver had arrived too late the last two mornings; and, "Are we allowing too much time? Arrival time should be 8:30 a.m."

Later that day, an ALC representative replied, in part: "I have already talked to grandmother. This should be worked out."

The Complainant stated this email shows, as of September 27, 2021, the District was aware there was a scheduling challenge in the morning, specifically, that an IA was not arriving at the drop-off location until 8:40 am and this was a problem because the Student was arriving at school between 8:20 and 8:30 am.

18. On September 28, 2021, the Parent emailed the special education teacher, stating the Student had expressed hesitancy to engage with and/or attend the media arts class that day.

Later that day, the special education teacher responded, in part: he noticed the Student was able to engage, though there was some resistance, with the help of the IA; and, if necessary, a class change could be instituted either at semester or earlier.

19. The District was on break October 8, 2021.
20. According to the Complainant, on October 15, 2021, the Student eloped from the media arts class.

According to the District and documented in an email from the special education teacher to the assistant principal:

On October 15, 2021, the special education teacher notified the family [of the elopement] and worked to schedule a meeting to address the elopement and strategize supports for Media Arts. On Saturday October 16, the Complainant brainstormed why Student may be so resistant to his Media Arts class, particularly surrounding his dislike of group work.⁷ Ultimately, a meeting was scheduled for October 19.⁸

21. According to the District, "On multiple days [during the week of October 18, 2021], Student's transportation released him before he was met by his 1:1 paraeducator, raising concerns about Student's safety."

22. On October 18, 2021, according to the Complainant and generally confirmed by the District's response:

Paraeducator 3 stopped working as the substitute 1:1, the special education teacher was not notified, Student had no 1:1 at all until 1:30 when the special education teacher learned of the situation only because Student showed up alone and without supervision in his classroom at lunchtime. Student was not met by staff when he arrived at school and the driver did not notify the assistant principal as expected, this contributed to the situation.

23. On October 19, 2021, a meeting was held to address the Student's elopement from media arts. According to the District:

A meeting was held...with the special education teacher, the Complainant, Student, the family and the Media Arts general education teacher...The team discussed alternative supports for the class and explored what may have been causing Student's resistance of Media Arts, including strategies surrounding group work and social interaction.

⁷ In an October 16, 2021 email to the special education teacher and media arts teacher, the Complainant shared thoughts on the Student's recent elopement and/or social emotional challenges: the Student had difficulty engaging in work during the previous remote instruction period; the fact that the Student had an IEP goal related to teamwork and the media arts class stressed, as a major component, teamwork; and, it helps the Student if he is "allowed to choose whether he is working with others."

⁸ The District's response included a Microsoft Teams Meeting Invite for an October 19, 2021 meeting between the special education teacher, the media arts teacher, the Student, and the Complainant. The agenda items were: re-evaluate goals in the media arts class; review current strategies and expectations around support for the media arts class; and, "agree on a team game plan that best supports Student's learning/goals."

24. Also, on October 19, 2021, the Parent emailed the program specialist, stating, in part: "As you know, Student had no 1:1 most of yesterday. The driver leaving Student at school without being met contributed to the problem."
25. According to the Complainant, a temporary "Access paraeducator" was assigned to be the Student's 1:1 paraeducator on October 19 and 20, 2021. The Complainant also stated: the Student "was not met by staff when he arrived" at school on October 20, 2021.⁹
26. On October 20, 2021, the Complainant emailed the assistant principal and the special education teacher, stating: she had spoken with the ACL driving service; a new driver was assigned; and, the supervisor stated it would be understood the driver was not to drop the Student off unless met by staff and "if there is no staff the driver will visually make sure that Student goes into the school building [and] he will also call the assistant principal."
27. According to the Complainant, the Student was not provided with a 1:1 paraeducator on October 21, 2021.

In its response, the District stated it was not able to provide the Student with a 1:1 paraeducator for "the full-day" on October 21, 2021.

28. On October 21, 2021, the administrative assistant emailed the special education supervisor, stating, in part: "I just spoke with Complainant, no one met Student this morning when he was dropped off by the car service." Several additional emails contained the following information:
 - The Complainant stated ALC had shown it was incapable of not dropping the Student off if no staff member was present upon arrival at the school building and that "another transportation solution [was needed] now."
 - The transportation coordinator stated the new driver escorted the Student to the door of the school, but no staff were present to meet the Student at the threshold to the school building.
 - The assistant principal emailed several District staff members, stating, in part: Student had a 1:1 who would receive him every morning; the special education teacher could provide more details on the arrival arrangement; and, "if no one is there to meet Student, the driver can call me...and I will go meet him outside."
 - The special education teacher shared details on the drop off arrangement with District staff later that day; the driver the day of October 21, 2021 was a substitute driver and did not realize he had to wait until a staff member was present to hand the Student off; and, accurate drop-off arrangement details were communicated to the new driver on or about October 21, 2021.
29. According to the District, it provided the Student with a 1:1 paraeducator on October 22 "through existing staff and substitutes."

In relation to the October 22, 2021 drop-off, *see* email from transportation coordinator to field operations account manager (October 22, 2021; 00:56:17) ("Our intervention associate for the school plans to be at the school tomorrow morning. I asked him to be there by 8:20 am in

⁹ *See also* email from Complainant to associate superintendent (October 20, 2021); *see also* email from special education teacher to assistant principal (October 20, 2021) ("[The Complainant's email] seems to sum it up, unfortunately").

case Student's car arrives early and he has the...cell number if he does not see any staff outside to meet Student"); see also email from transportation coordinator to assistant principal (October 22, 2021; 16:34:28) ("[Two staff members were] at [the school] this morning. Student was dropped off and received by the assistant principal. His drop off time was 8:23 am per ALC trip tracker...since the last two days Student arrived between 4-7 minutes early, I would like to change his pickup time by 5 minutes so his arrival time at school is at 8:30 am or a little after. I saw other staff arrive in the load zone about 8:25 or after to meet students on some special education buses, so arriving later should ensure there is staff in the load zone").

30. According to the Complainant, on October 22, 2021:

The special education teacher communicated to me by phone that **paraeducator 3** and **paraeducator 4** would be assigned as Student's 1:1 and they would take turns on alternating days. This was to be able to provide some support to the other students that **paraeducator 3** and **paraeducator 4** work with. It did not provide Student with the consistency required by his IEP.

In relation to the week of October 22, 2021, the District's response stated, and email in the District's response generally supported:

Given the challenges with transportation the week of October 18, transportation arranged for a staff member to arrive early at the school to ensure Student was escorted to the building regardless of his arrival time on October 22. The Transportation Coordinator monitored the morning drop-off to ensure it went smoothly. She noted that because Student's transportation was arriving 5-7 minutes early, there was a risk of staff not being present in the loading zone, and proposed postponing his pick-up time by five minutes to minimize the risk of staff not being available. The expectation for Student's driver to wait for District staff to meet Student before releasing him to the school was also reiterated to Student's driver.¹⁰

The Complainant's reply read, in part:

The District's plan was for the driver to keep Student in the car until staff arrived to meet him. The plan did not address the fact that the driver has no ability to keep Student in the car. Student will not wait for someone to come out to meet him. In my conversations with the ALC supervisor, we came up with a more workable plan, but the District apparently ignored our suggestion and continued to expect the driver to make Student wait and/or Student to change his behavior by waiting for someone to come and meet him.

¹⁰ The email thread on Pages 349-350 of the District's response confirms these facts: Email from transportation coordinator to field operations manager (October 22, 2021). Notably, this email thread shows: the Student's pick-up time was pushed back five minutes so that the Student did not arrive to school early; the driver was instructed to wait to release the Student if a staff person was not present to escort the Student into school; and, the driver was provided with the assistant principal's cell phone number, to call if a District staff person was not present upon arrival at school.

31. According to the District's response, the week of October 25, 2021: "**Paraeducator 3** and/or **paraeducator 4** were assigned to act as Student's 1:1 IA while the District sought a permanent 1:1 IA. During this time, Student was provided 1:1 IA support as outlined in his IEP."¹¹
32. According to various emails, sometime during the week of October 25, 2021, the Complainant purchased and dropped off at the school a safety vest for the assigned District staff person to wear when meeting the Student.
33. According to the Complainant, the Student was not met by school staff when he arrived at school on October 26, 2021. The Complainant's email to the assistant principal that day read, in part: "Student was not met by staff when I dropped him off this morning. I was told...the person meeting him would be wearing an orange vest. There was no one in an orange vest this morning."

According to the District, though: "contrary to the agreed-upon protocol, neither the assistant principal nor the school was notified that Student had been released to the building by Complainant." (Based on emails, it appears the Complainant herself dropped off the Student at school that day and arrived before the paraeducator was there to meet the Student.)

34. According to the District and reflected in emails, on or about October 26, 2021, "because Student's transportation continued to arrive before the standard drop-off time and before staff was working, the District arranged for an IA to be compensated to arrive early to ensure coverage regardless of the drop-off time." According to the emails, this arrangement was to last one month, after which it would be revisited.

According to emails, on or about October 26–27, 2021, the District did approve an arrangement by which a paraeducator would arrive earlier than normal to ensure a staff member was present upon the Student's arrival at school. (According to the emails, this arrangement was to last one month, after which it would be revisited.)

Separately, on October 26, 2021, the Complainant emailed the special education teacher, stating the Student had expressed some reservations and frustrations about the media arts class. That email read, in part: "It is not the teacher [nor] the students. It is the room, the environment. He doesn't like being in the room. He said it is also the subject matter that he is having problems with but the room would be a problem regardless of the subject."

The special education teacher responded later that time, stating the Student had also reported problems with the "vibe" of the media arts classroom. The special education teacher proposed "checking in with the occupational therapist around supports."

35. In an email dated October 27, 2021, the assistant principal informed the Complainant: "I met Student this morning and escorted him to his class."

¹¹ Emails show that, at least for Monday, October 25, 2021, **paraeducator 3** served as the Student's 1:1 for that day.

Separately that day, the special education teacher emailed the Complainant: "From what I've understood, the transportation pick-up should have been resolved...[W]e've had staffing adjustments and switches...If the 1:1 is not here, I pull one of our other [IAs] for the day. If all else fails, one of our vice principals will meet him."

36. On October 29, 2021, the special education teacher emailed the assistant principal, stating, in part: "I will have paraeducator 3 be the [early morning Student drop-off] person."

37. According to the Complainant, on October 29, 2021:

Student eloped during break time before 4th period...He told me he was in the hallway and the IA assigned to him [**paraeducator 3**] was talking to other staff members. He told me he just decided he needed to take a walk...He left the building...He was missing for 75 minutes...The incident report written by the security officer lacks critical details and is inaccurate.

In relation to the October 29, 2021 elopement, the District stated:

Student was not located until he was blocks away from the building. Complainant and the police were notified. Luckily, Student was safely located by the principal and returned to the school.

That same day, Complainant met with administration and the special education teacher to discuss the elopement and outline strategies to avoid future elopements. The team discussed a crisis plan, adjustments to the morning drop-off, and Student's 1:1 IA. In addition to speaking with the school team, Complainant also spoke with the program specialist at length to address her concerns.

...

[After the events of October 29, 2021], team also adjusted Student's schedule so he would participate in a 1:1 photography independent study, rather than attend Media Arts [and] excused...his missed [Media Arts] assignment that was lowering his grades.

The District's response included an incident report for the October 29, 2021 elopement. It was written by the security specialist and read, in part:

Received a call from the main office regarding a missing 10th grade SPED student. He was last seen by staff on the 3rd floor after leaving [the general education teacher's] class about 10:30am. **Paraeducator 3** rushed into my office asking for help locating Student in the building. After a futile search, we went back and checked his whereabouts from his last class.

My surveillance video showed Student leaving [the general education teacher's] room (unescorted) down to the 1st floor, and eventually exiting the northeast door...He then proceeded across the street...I radioed his last location as the principal, myself jumped into our vehicles circling the neighborhood. The police and the Student's mother was called. After about 10 minutes of driving, I received a call that the principal found Student a little over a mile north of the campus walking and reading his book. When asked why he left the campus he answered, 'I just wanted to go for a little walk.' Parent was furious that this was the 2nd incident of losing the Student within 2 weeks. Student is safely back in class.

38. The District's response included a progress report for the Student with entries dated November 2021. It reads, in part:

- **Written Language 1:** some progress made.
- **Written Language 2:** not applicable – "Student's language arts class has not been assigned an essay, [this] unit [will begin] in December."
- **Study/Organizational Skills 1:** some progress made.
- **Study/Organizational Skills 2:** some progress made.
- **Study/Organizational Skills 3:** little or no progress made – "Given the return to in-person learning, Student has had to re-learn in-school expectations."
- **Study/Organizational Skills 4**¹²: little or no progress made – "Given the constant rotation of 1:1 IA support, Student has not been able to have an opportunity to work on this goal."
- **Social/Behavior 1:** goal met.
- **Social/Behavior 2:** little or no progress made – "Based on direct observations, Student has been able to show consistent body direction at a speaker 100% of the time. However, COVID protocols require students to face the same direction, making this a potentially inflated data point. Student has also shown positive growth in non-verbal engagement, responding with eye contact to reminders (quiet, direct, subtle) from educators checking for engagement."
- **Social/Behavior 3:** some progress made.
- **Social/Behavior 4:** little or no progress made – "Based on student observations, student input, staff input, Student has not selected a preferred peer for activities. From our observations, Student will work on the periphery of a small group, and has expressed his desire to avoid academic collaboration, for fears of letting the group down or not knowing the content."

39. According to the Complainant, on November 1, 2021: "**Paraeducator 4** has been assigned to be the temporary 1:1 everyday. **Paraeducator 3** will provide breaks but the two will no longer alternate days. This was communicated in a phone conversation with the special education teacher."

40. According to the Complainant's reply, "a few days after Student eloped...on October 29, 2021...the assistant principal informed me in a phone call [that] he needed to be the person who met Student in the morning."

In an email dated November 1, 2021, the assistant principal emailed several District staff members, stating, in part: "[Special education teacher] can you email all Student's teachers and tell them if they see Student without a 1:1 they should alert administration/security right away?"¹³

41. Several District staff members met on November 1, 2021 and developed a 'Crisis Planning Tool for Elopement' (crisis plan). In its response, the District explained the crisis plan was "like a

¹² This goal read, in part: "when given a multi-step assignment with a future due date Student will work with his 1:1 IA to create a calendar reminder within his Outlook schedule improving assignment tracking from zero out of ten observed assignments tracked to ten out of ten observed assignments tracked as measured by IA feedback and the students Outlook calendar."

¹³ The special education teacher sent the requested email on November 2, 2021.

Behavior Intervention Plan (BIP), the plan detailed specific steps around the antecedent-behavior-consequence response.” The crisis plan read, in part:

Specific Destructive or Dangerous Behaviors: Elopement: Student has demonstrated elopement, both within our campus and eloping off campus, due to an aversion to his 4th Period Video Production environment.

Precursors: (preliminary changes in behavior): The behavioral precursors include a reduction in verbal engagement, expressions of self-harm (RC has never followed through on these expressions), expressing a desire to not be in the environment.

Triggers (events that precipitate behavior): The trigger has currently been identified as the classroom environment. We also suspect that it may be also in part because of how the class is structured. Student does not receive direction/instruction for a period of time (up to 30 minutes). The need to self-start may be a triggering factor as well.

Preventive Strategies (what we do to prevent escalation): Provide a slow start to the class through the usage of FEAST time.¹⁴ Start in his 4th period class during FEAST, where he can receive 1:1 direction with IA support. He can then work on the task with supervised independence. Allow for Student to access room 324 as a work room or a break room.

De-escalation procedures (in response to precursors, but before crisis occurs):...Prompt communication: ‘Student, I wonder if this environment has a difficult vibe right now. What do you think?’ Offer choices: ‘Would you like to step into the hall for a five-minute break or would you like to go to...room (324) for a break?’ Provide redirection: ‘First, let’s find a good stopping point in our work, then let’s take a break.’ Clarify expectations: ‘Reminder: if you need a break, the expectation is that you inform an adult. We have to know where students are.’

Management of Crisis Behaviors:...Change surroundings: When Student has shown the precursors to elopement or has begun to elope, follow him and keep eyes on him, redirecting to room 324, if possible. Seek assistance: Send a text to [the special education teacher] if possible, while keeping eyes on Student. Radio the elopement incident to security. Seek assistance: Once security has been notified, continue to follow Student and redirect to room 324. If he departs campus, radio the update to security. Security should alert admin via radio. Seek assistance: Once [the special education teacher] has been notified that Student has eloped, [the special education teacher] will update [the] members of Student’s family to provide an update on the situation. STAFF WILL ONLY CALL 911 FOR ELOPEMENT BEHAVIOR IF THE FAMILY GIVES THE GO-AHEAD.

Incident Follow Up (debriefing and planning following incidents): Once Student has ceased eloping or attempted eloping, acknowledge that positively, ‘Student, I appreciate that you are working at being in this class. I see that it is hard, but I think you’re doing great. Thank you.’

¹⁴ According to the special education teacher: “FEAST time is essentially a small block (10 minutes, plus 5 for passing period, so 15 total) of time for students to visit another teacher for support, check in with a tutor, have some time to engage with classwork, use the bathroom, have a snack, etc.”

When convenient, write an email that briefly describes the incident, with an attention to what Student's behavior was like before eloping, while eloping, and after eloping. Include the approximate time spent engaging in the eloping behavior.

(emphasis in original).

Additionally, the District stated: on or about November 1, 2021:

[The] team also adjusted the 1:1 IA schedule to ensure break and absence coverage. As Complainant had previously indicated that **paraeducator 4** may be a better fit for Student, **paraeducator 4** was temporarily assigned as Student's 1:1 IA and the coverage plan was adjusted accordingly, with **paraeducator 3** providing breaks. It was agreed that during Media Arts, **paraeducator 4** would work independently with Student on photography.¹⁵ Lastly, the team continued discussing drop-off protocol (early arrival, calling the assistant principal, etc.). The team also explored contracting with another transportation provider.

42. On November 2, 2021, the special education teacher emailed the Student's teachers, stating, in part:

Recently, we've seen an uptick in elopement behavior from Student. We've narrowed down the antecedent to the behavior and are working on creating a strong plan to ensure his safety. What we need from you is this: if Student is in your class without his 1:1 aide, notify security, administration, and myself ASAP. The reason for this is that we can then respond and address the lapse in coverage.

43. On November 3, 2021, the Complainant informed the special education teacher that in the event of a future elopement, the Student's parents should be called prior to the police being called.

44. On November 4, 2021, special education director 1 (director 1) emailed special education director 2 (director 2) and the executive director, stating, in part:

An IEP meeting was held for Student on October 29, 2021. The program specialist and Parent were both in attendance. Additionally, the assistant principal has had email correspondence within the last two weeks with parent, and the program specialist has had multiple phone conversations with her this week.

Transportation Issue...Student is regularly dropped off by the driver 15-20 minutes before staff are required to report to work...The transportation department is working to change the provider for predictable schedule and history of compliance with handoff procedure, however they need 30 days to make the change.

Solution: communicated to Parent via Teams IEP meeting on October 29, 2021....A paraeducator will be paid extra to receive Student off of transportation for the next 30 days. The administrative team will provide backup for 30 days if the paraeducator is not able to be there. Orange vests will be worn by [Student drop-off] staff so the driver can identify who is there to receive Student. The driver will not release Student until a staff member is

¹⁵ This factual information is largely supported by the email thread on Page 457 of the District's response: the program specialist to director 2 (November 4, 2021).

available to receive him. This solution will continue until the transportation department is able to transfer Student's route [to the new transportation provider].

One-to-One Issue...Solution communicated to Parent on October 29, 2021...The District team developed a schedule to provide consistent one-to-one support for Student throughout the school day. The schedule and support plan are attached.

Separately on November 4, 2021, the regional special education program specialist emailed executive assistant, stating, in part: "[We recently created an] interim 1:1 paraeducator schedule with break coverage. **Paraeducator 4** will be providing the 1:1 support with **paraeducator 3** providing the breaks. Additionally...**paraeducator 3** will provide lunch break/coverage of Student during fourth period while working with Student on a photography independent study."

45. On November 7, 2021, a general education teacher emailed the Complainant, stating, in part: "A slight hiccup (that is not Student's fault at all) is that his one-to-one IA who was working with him with [the] first project is now on an extended leave, so his new IA doesn't know as much about that project to help him."
46. On November 8, 2021, the Complainant provided feedback to the Crisis Planning Tool. The Complainant: wanted to ensure the language the crisis plan "allow for Student to access room 324" meant the Student would be permitted to not go to the media arts class when he choose; was pleased to see that the new schedule "include[d] FEAST time before 4th period; wanted to clarify if, under the plan, whether a paraeducator was supposed to follow the Student in the event of an off-campus elopement; and, expressed displeasure with the language "the need to self-start may be a triggering factor as well," as the Complainant believed the Student's IEP provided for direction from staff. The Complainant also stated that she was thereby "request[ing] a behavioral intervention plan amendment to address this elopement behavior."
47. The District was on break November 11–12, 2021.
48. According to the Complainant, "there is no evidence the [Student's] driver [called] the assistant principal on several days when Student was not met [by District staff at the start of school]: October 18, 20 – 21, and 26, 2021; and, November 15, 2021."
49. According to emails, on November 16, 2021, **paraeducator 4**—rather than the assistant principal—was present for the Student when the Student was dropped off.
50. On November 16, 2021, the special education teacher emailed the media arts teacher and the Complainant, stating, in part:

I think we should exempt [the media arts] assignment [the Student had challenges completing and which the Complainant has highlighted as] we were not able to provide the appropriate accommodations outlined in Student's IEP. This mostly happened because of the lack of consistent 1:1 support because we've been short all year, which led to us not being able to address Student's initial communication and eventually the elopement. For that reason, it seems reasonable to exempt that work and focus on photography.

Later that day, the media arts teacher responded, stating: "Sounds good to me. Done."

51. According to emails, on November 17, 2021, a District staff member was present when the Student was dropped off at school.
52. In an evaluation consent form provided to the District on November 19, 2021, the Complainant highlighted the Student's elopement challenges as a particular area of concern.
53. According to the Complainant, on November 22, 2021: "**Paraeducator 5** returned from leave and was assigned as the substitute 1:1 IA for Student for three days."

According to the District, on November 22, 2021, **paraeducator 5** "was assigned to be Student's 1:1 IA, with the prospect of the position becoming permanent."

54. The District was on break November 25–26, 2021.
55. On December 3, 2021, the Complainant emailed the assistant principal, stating the Student worked well with **paraeducator 5**.
56. According to the District, on December 6, 2021, **paraeducator 5** "was assigned the permanent position" as the Student's 1:1 paraeducator.
57. The District was on break December 20, 2021 through January 2, 2022.
58. According to her complaint request, the Complainant would like, in part:
 - **Paraeducator 5** to serve as the Student's full-time 1:1 paraeducator, as the Student requires "consistent support"; and,
 - The functional behavioral assessment (FBA) and behavioral intervention plan (BIP) be revised to address the Student's challenges with elopement.

CONCLUSIONS

Issue 1: IEP Development – The Complainant alleged the District did not follow proper individualized education program (IEP) development procedures in relation to the Student's needs in the area of elopement.¹⁶

When developing a student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability.

¹⁶ From the documentation provided to OSPI, it appears a part of the Complainant's elopement concerns related to the Student's school arrival/drop-off routine. This is addressed, in part, below: Issue 2: Morning Drop-Off Plan.

Here, neither the February 2021 IEP nor the February 2021 BIP mention the Student having elopement challenges. There does appear to have been some recognition the Student had a need in this area prior to the start of the 2021–2022 school year: for example, on August 30, 2021, the program specialist emailed the Complainant, stating, in part: an adult needed to meet the Student upon the Student’s arrival at school “due to [a] history of elopement.”

In the fall of 2021, the Student eloped from his media arts class on October 15 and 29.

When confronted with a student who demonstrates social-emotional and/or behavioral challenges, a district has several options. For example, as an initial step, a district can implement positive behavioral interventions: strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Additionally, a district can conduct a functional behavioral assessment (FBA). And FBA focuses on identifying the function or purpose behind a child’s behavior. Once the need for a reevaluation is identified, a district must act without undue delay and within a reasonable period of time.

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

Here, the District undertook numerous actions after the Student eloped from his media arts class on two occasions in October 2021. For example, in part:

- A meeting was held on October 19, with, in part, the special education teacher, the Complainant, the Student, and the Media Arts general education teacher to address the first elopement incident.
- The program specialist, Parent, and assistant principal met on October 29 to discuss the second elopement incident. Following the October 29 elopement, the Complainant also exchanged emails with the assistant principal, and had several conversations with the program specialist.
- On November 1, 2021, District staff utilized existing data to create a crisis plan. Importantly, the crisis plan had the essential components of a BIP. For example, in part, the crisis plan detailed the following: the Student demonstrated elopement challenges around the media arts class, specifically, the fact that this class required a certain level of group work and self-direction; certain behaviors preceded the elopement, including, in part, “reduction in verbal engagement”; certain preventative and/or de-escalation strategies could be used to try and prevent the elopement, including, in part, “provide a slow start to the class,” “allow Student to access [a separate room] as a work room or a break room,” and, reminding the Student of the availability of breaks; and, a safety and surveillance plan in the event an elopement did occur.

- And, while the Parent did not attend the November 1, 2021 meeting wherein the draft crisis plan was created, the documentation provided to OSPI during this complaint does show the Parent was provided a copy of the draft crisis plan and provided feedback between November 3–4, 2021.
- At some point between November 1 and 4, 2021, it was determined that, rather than participating in the traditional media arts classroom format, the Student would work with paraeducator 4 in independent photography study, as the media arts classroom environment was an identified trigger for the Student’s elopement.
- On November 2, 2021, the special education teacher emailed several District staff members, stating, in part: if the Student was seen without his 1:1 paraeducator, administration and/or security needed to be alerted immediately.
- Beginning no later than November 2, 2021, the special education teacher began gathering observational data from the Student’s other teachers in relation to the Student’s elopement.
- On November 16, 2021, it was determined that a particular media arts assignment would be excused, as the Student was struggling with that particular assignment, in part because of the group work nature of the assignment and the fact that no single individual served as the Student’s 1:1 paraeducator in the media arts class throughout the fall of 2021, *see below* Issue 2: 1:1 Paraeducator Support.

The foregoing facts represent proper IEP development procedures: the Student demonstrated a changed need in the area of elopement, and the District promptly gathered relevant data on the Student’s needs in this area, including from the Complainant, and created what was, functionally, a BIP—the crisis plan. Therefore, no violation of the IDEA is found.

Issue 2: IEP Implementation – The Complainant alleged the District did not properly implement the following portions of the Student’s IEP: the morning drop-off plan; and, the Student’s 1:1 paraeducator support.

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.

Morning Drop-Off Plan

Here, it was determined—prior to the start of the 2021–2022 school year—that the Student’s specialized transportation service needed to “coordinate with school staff to make sure an adult meets Student [when Student is dropped off at school] due to [Student’s] history of elopement.”

From the documentation provided to OSPI, it does not appear the Student’s IEP team determined the Student’s needs in relation to school drop-off changed throughout the semester. Rather, the dispute between the parties appears to have principally concerned whether the District properly implemented the morning drop-off routine throughout the 2021–2022 school year.

On that note, the documentation shows: on approximately six occasions, the Student was not met by District staff when dropped off at school.¹⁷ There were approximately 70 days of school prior to winter break. Though OSPI acknowledges the importance of a District staff person meeting the Student when dropped off at school, OSPI cannot conclude that failing to provide this service on 6 of 70 days represents a material failure to implement the Student's services in this area.¹⁸ Thus, there has not been a violation of the IDEA.

Relevant to this finding is the following: the District was responsive to and attempted to solve logistical challenges related to the morning drop-off. For example, in part:

- Following the confusion about the routine on September 1–2: on two occasions, District staff contacted the Student's transportation service and informed them the Student should not be let go until met by District staff; the Complainant, assistant principal, and paraeducator 3 collaborated and agreed on a specific drop-off location; and, the assistant principal provided his phone number to the Student's driver to call in the event no staff person was present at drop-off.
- When District staff were not present at drop-off on more than one occasion during the week of October 18 due to a new driver transporting the Student: the drop-off arrangement was explained to the new driver on October 21; on or about October 22, the Student's pickup time at home was pushed back approximately five minutes, so the Student did not arrive at school early; the new driver was provided with the assistant principal's phone number; and, the assistant principal reminded (via email) several District staff members that a staff person needed to be present when the Student was dropped off and "if no one is there to meet Student, the driver can call me...and I will go meet him outside."
- Beginning on or about October 26, for one month (at least), District administration approved an arrangement whereby an instructional aide would be present at the curb earlier than was previously established—to ensure a District staff person was present in the event the Student's transportation service dropped him off early.

Again, the foregoing facts show the District was responsive to implementation challenges regarding the morning drop-off routine, and these facts are relevant to a finding that there has been no IDEA violation on this specific issue.

Still, an IEP must include a statement of the services to be provided to a student, including whether a student requires specialized transportation. And, all staff members responsible for providing services under an IEP must be made aware of their respective responsibilities. Here, it does not appear the details of the Student's drop-off arrangement—as determined August 30–31, 2021—were ever reflected in an amended IEP; the February 2021 remained unchanged; and, the February

¹⁷ These six days were as follows: September 1–2; approximately three days during the week of October 18th; and, October 26th. By way of further explanation: for September 1–2, it appears the Student's driver dropped the Student off at an unexpected location on the school campus; for the week of October 18th, the documentation is imprecise but does support a finding the Student was not met by District staff at drop-off on more than one occasion during that week; and, on October 26th, the Complainant herself dropped the Student off and the District states the Complainant did not follow the established procedure of calling a District staff person to have a staff member come outside and meet the Student.

¹⁸ It is also significant that there do not appear to have been any elopements that began or started with the morning drop-off routine.

2021 IEP just stated the Student required specialized transportation. This represents a violation of the IDEA. The Student's IEP team will be required to amend the Student's February 2021 IEP to include more specific details in relation to the Student's needs resulting from the Student's disability in the area of transportation to school and the drop-off routine once at school.

1:1 Paraeducator Support

The February 2021 IEP provided the Student with a 1:1 paraeducator "every day across all classrooms."

For a significant portion of both of the school days on October 18 and 21, it appears the Student was not provided with a 1:1 paraeducator. Again, there were approximately 70 days of school prior to winter break. Failing to provide the Student with a 1:1 paraeducator on approximately 2 of 70 days of school does not, in and of itself, represent a material failure to implement the IEP.

However, it is also notable that no less than four different individuals (**paraeducators 2–4**) served as the Student's 1:1 paraeducator during the fall 2021 semester.¹⁹ Normally, this would not be an issue, as districts generally have discretion in personnel decisions, such as staffing assignments—meaning—so long as a student is provided with the required IEP service by an appropriately-qualified individual, a district can determine which staff person provides that service. Here, though, the Student's February 2021 IEP does stress the importance of the Student having consistency in who served as the 1:1 paraeducator. For example, the February 2021 IEP read, in part: "Student's diagnosis of autism makes it difficult for Student to receive feedback and directions from multiple adults and he benefits from having a consistent person to rely on while navigating in the classroom environment and socially from his peers"; and, "as the classroom content continues to increase in difficulties, Student relies even more on the 1:1 consistent and familiar paraeducator to support him in the classroom."

A difficulty in determining whether this particular portion of the IEP was not materially implemented is the relative imprecision of the language in the IEP on this issue: the Student required consistency in terms of the individual providing the 1:1 paraeducator services, but at what exact point does provision of this service become inconsistent? For example, there were fairly significant portions of the fall semester wherein the same individual served as the primary 1:1 paraeducator—principally—September 1 through at least September 23, November 1 through November 19, and November 22, 2021 through the start of winter break.

¹⁹ The 1:1 paraeducator staffing timelines appears to have been, roughly, as follows: from September 1 through October 22, 2021, **paraeducator 2** served as the primary 1:1 paraeducator, with **paraeducator 3** and other "access paraeducators" providing back-up, when needed; from October 25 through October 29, 2021, **paraeducators 3** and **4** alternated the days on which each was the primary 1:1 paraeducator; from November 1 through November 19, 2021, **paraeducator 4** served as the primary 1:1 paraeducator, with **paraeducator 3** providing back-up, when needed; and, from November 22, 2021 through the start of winter break, **paraeducator 5** served as the primary 1:1 paraeducator.

It is also significant that the District appears to have been generally responsive on this issue. For example, in part: the District took timely steps to ensure someone was available to serve as the Student's 1:1 paraeducator—again—the Student was only not provided with a 1:1 paraeducator on roughly 2 of 70 school days; on or about November 1, 2021, the District revised the various paraeducator schedules so as to ensure “consistent one-to-one support for Student throughout the school day”; **paraeducator 4** was assigned the role of the Student's primary 1:1 paraeducator beginning November 1, 2021, in part, because the Complainant had previously said **paraeducator 4** worked well with the Student; and, **paraeducator 5** was assigned the role of the Student's primary 1:1 paraeducator beginning on or about December 6, 2021, after the Complainant stated on December 3, 2021 that **paraeducator 5** worked well with the Student.

Still, it does appear the fact that more than one individual served as the Student's 1:1 paraeducator did impact the Student's ability to make progress on at least one annual measurable goal: according to the Student's November 2021 progress report, the Student made at least some progress on all IEP goals but the entry for **study/organizational skills 4** (ability to utilize Outlook scheduling and calendaring to track due dates), which read, in part: “little or no progress made - given the constant rotation of 1:1 IA support, Student has not been able to have an opportunity to work on this goal.”²⁰ Therefore, there has been a violation of the IDEA, as the inconsistency in the 1:1 support negatively impacted the Student and some compensatory education in **study/organizational skills 4** is warranted.

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. There is no requirement to provide day-for-day compensation for time missed and there is no statutory or regulatory formula for calculating compensatory remedies.

Here, the February 2021 IEP provided the Student with three hours of specially designed instruction each week in study/organizational skills. Given the relatively few days the Student was without a 1:1 paraeducator, and the fact that the District was generally responsive to the Complainant's concerns and the Student's needs in this area, an equitable remedy is: the Student will be provided with six hours of specially designed instruction in **study/organizational skills 4**. Said compensatory education will be in a one-on-one setting—meaning—just the Student and the service provider.

CORRECTIVE ACTIONS

By or before **March 25, 2022, March 28, 2022, and May 20, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

²⁰ Though not directly relevant to the Student's ability to make progress on his IEP goals, there are emails detailing the fact that multiple individuals served as the Student's 1:1 paraeducator had a comparatively detrimental effect on the Student's work in the media arts class as well.

STUDENT SPECIFIC:

IEP Revision

By or before **March 25, 2022**, the Student's IEP team will meet to amend the Student's February 2021 IEP to include more specific details in relation to the Student's needs resulting from the Student's disability in relation to the drop-off routine once the Student arrives at school.

OSPI notes if the Complainant agrees, Complainant input is considered, and, the Student's needs in this area have not changed since August 30–31, 2021, this revision can be made without an IEP meeting.

By **March 28, 2022**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's amended IEP; iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; and, v) any other relevant documentation.

Compensatory Education

By or before **March 25, 2022**, the District and the Complainant will develop a schedule for providing the following compensatory education to the Student: six hours of specially designed instruction in **study/organizational skills 4**.

The District will provide OSPI with documentation of the schedule for services by or before **March 25, 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. Because of the COVID-19 pandemic, the compensatory education may be provided remotely.

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 **May 20, 2022**, including those needing to be rescheduled.*

No later than **May 20, 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 Complainant for the cost of providing transportation for these services. If the District reimburses the Complainant 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 **May 20, 2022**.

DISTRICT SPECIFIC:

None

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

Dated this ___ day of March, 2022

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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, Complainants (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. Complainants (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.)