

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-58

PROCEDURAL HISTORY

On April 24, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 25, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 19, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on May 22, 2023. OSPI invited the Parent to reply.

On May 29, 2023, OSPI requested additional information from the Parent. That information was provided the same day and forwarded to the District on May 30, 2023.

On May 30, 2023, OSPI requested additional information from the Parent. That information was provided the same day and forwarded to the District on May 31, 2023.

On May 30 and June 1, 2023, OSPI requested additional information from the District. That information was provided to OSPI on June 6 and 8, 2023, and forwarded to the Parent on June 6 and 8, 2023, respectively.

On May 31 and June 1, 2023, OSPI requested additional information from the Parent. That information was provided and forwarded to the District on May 31 and June 1, 2023, respectively.

On June 6, 2023, OSPI requested additional information from the District. That information was provided to OSPI on June 8, 2023 and forwarded to the Parent on the same day.

On June 8, 2023, OSPI's complaint investigator conducted a telephone interview with the Parent.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 25, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. In May 2022, did the District follow transfer procedures for the Student's individualized educational program (IEP), that was transferred from another district, including the Student's 1:1 paraeducator services, according to WAC 392-172A-03105?
2. Since May 2022, has the District been appropriately implementing the Student's IEP, according to WAC 392-172A-03110?
3. Has the District appropriately addressed the Complainant's request for an independent educational evaluation (IEE) according to WAC 392-172A-05005?

LEGAL STANDARDS

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to another Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

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. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in

question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. District's must ensure that the IEE is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria. 34 CFR §300.502; WAC 392-172A-05005.

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.

FINDINGS OF FACT

Background: 2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was a kindergartener in another district in Washington.
2. On November 1, 2021, the Student's IEP team from the other district met. The Student's IEP provided the Student the following specially designed instruction (SDI) in a special education setting, provided by a special education teacher:
 - Adaptive: 30 minutes/1 Time Weekly
 - Social/Emotional/Behavior: 30 minutes/1 Time Weekly
 - Communication: 30 minutes/1 Time Weekly (provided by a speech and language pathologist (SLP))

The IEP also included the following supplementary aids and services:

Concurrent	Service	Service Provider	Frequency	Location
Yes	Behavioral Support	Board Certified Behavior Analyst (BCBA)	380 Minutes/ 4 times weekly	General Education
Yes	Behavioral Support	Behavioral Specialist (BS)	180 Minutes/ 1 times weekly	General Education
Yes	Behavioral Support	BCBA	90 Minutes/ 1 times weekly	General Education

A "Description of Services" in the IEP stated:

A weekly BCBA consult will be provided to help plan classroom supports. A behavior technician will be working in the general education classroom to support [the Student] at a 1:1 ratio based on his specific needs over time. He will need supervision during outdoor play and transitions due to elopement. [The Student] will have access to the support/sensory room as needed for requested breaks.

3. A prior written notice (PWN), dated November 1, 2021, from the other district stated, in part, that the Parents were considering moving the Student to a home school program.
4. On May 29, 2023, OSPI sent the Parent an email, asking about if and when the Student was home schooled in the other district. The Parent replied, in part:

Yes he was home schooled...I think it was around November 2021-May 2022 (which is when we moved and enrolled him in [the District]). He still had an active IEP while we were homeschooling and he went in to [the other district] primary for services once a week.

Spring 2022 Transfer to the District

5. A PWN, dated April 25, 2022, from the Student's current District stated, in part:

[Student] will receive special education services through the...District in the areas of Adaptive, Social/Emotional and Communication.

...

IEP Discrepancies:
Adaptive goal missing
Adaptive and Social/Emotional services both listed as concurrent.
Description of services below the service matrix notes: 'A behavior technician will be working in the general education classroom to support [Student] at a 1:1 ratio based on his specific needs over time' but 1:1 support is not included in the service matrix.
IEP LRE is marked as Home Schooled/Part-Time.
[Student] will be attending full time in-person...
For these reasons the...District is unable to accept the IEP as written and will convene the IEP team to develop a new IEP for [Student].
6. May 16, 2022 was the Student's first day of attending a District school.
7. Related to the Student's transfer into the District, the District's school psychologist signed a declaration (signed May 19, 2023 in response to the complaint being investigated here) that stated, in part:

...

 5. I attempted to interpret the IEP from the [other] District, however, the service matrix was confusing as it listed behavioral support by both a BCBA and Behavior Specialist as supplementary aids and services. The BCBA services were listed twice for a total of 470 minutes and Behavior Specialist Services for only 180 minutes.
 6. While the service matrix described behavior support during the general education setting, the IEP did not describe how the BCBA services were to be served.
 7. I communicated with the school psychologist at [the other] district and learned that the Student had been home school since November 2021, that [the other district] was in the process of initiating a reevaluation, a functional behavior assessment, and that the Student was only accessing ancillary services for adaptive and social-emotional services only.
 8. The [other] district was unable to complete their evaluation and functional behavior assessment prior to the Student's start date [in the current District] of May, 16, 2022 because he was being homeschooled.
 9. After discussion with the Parents, we determined that more information was needed about the Student's present needs, particularly as he had not been in a school for several months, and agreed that the Student would start in a general education classroom.

8. The Student's special education teacher (teacher 1) also signed a declaration (May 19, 2023) that stated, in part, related to the Student's transfer:

...

2. On April 20, 2022, the Student transferred to the...District from [another] district. The Student transferred with an IEP providing one-to-one support in the general education classroom.
 3. The Student started...School on May 16, 2022 and was placed in a general education kindergarten classroom.
 4. Upon receiving the Student's IEP, the team noted that there was no documentation of a continued need for one-to-one support, since the Student had been homeschooled for multiple months while in the [other] district. Further, the documentation was confusing as it included services for both BCBA and behavior specialist, but did not specify in what setting and how the BCBA was to provide support.
 5. A new evaluation was conducted when the Student came to the [current] District. The IEP team also developed a new IEP right away for the Student. The Parent participated in both meetings.
 6. When meeting as an IEP team with the Parent, the team decided to conduct a six-week documentation period to determine whether one-to-one support would be needed in the Student's classroom, beyond the support already present in the classroom. The Parent did not disagree with the updated services.
 7. As the Student's special education teacher, I provided push-in services in the general education classroom. The Student had no disciplinary incidents and blended in very well with the other students in the classroom. The Student performed wonderfully and did not require additional one-to-one support.
9. On May 27, 2022, the Student's evaluation team met. The Student was found eligible under the autism eligibility category. The Student showed a continued need for special education services in the area of social-emotional skills. The PWN documented that the evaluation team considered and determined the Student no longer needed communication or adaptive instruction as the Student's "communication and adaptive skills are within average range."
10. On June 1, 2022, the Parent emailed the school psychologist as follows:

We have a concern about some of the behavior issues we are already seeing reported back to us from school. Issues in the classroom like breaking crayons or being disruptive etc., or not following directions in specialists. Also drop off has already proven to have its difficulties.

I know some of the issues he's having are due to school being somewhat new right now. But I'm concerned some of these behavior issues aren't going to just resolve themselves. I'd hate to see him start first grade next year and constantly be having contact from school about what he's not doing right, because at this point we are doing everything we can to address these behavior issues at home.

These are also reasons he had a para in his classroom to be able to help him with some of these concerns so that the teacher was not constantly having to pay special attention to [Student].

11. On June 14, 2022, the Student's IEP team met and developed a new IEP for the Student. The Student's IEP provided the Student with 75 minutes of SDI in social/emotional/behavior weekly in a general education setting, provided by a general education teacher.

The Student's total minutes per week in school were 1,825 minutes and 0 minutes per week were spent in a special education setting. The percent of time in a general setting was 100%.

A PWN, dated June 14, 2022, stated, in part, that the team discussed "supports for [Student] during specialist" and that "Mom also talked about restarting ABA therapy during the summer."

2022–2023 School Year

12. The Student was enrolled in a District elementary school as a first grader and the first day of instruction for the 2022–2023 school year was September 6, 2022. At this time, the Student's June 14, 2022 IEP was in effect.

13. On September 20, 2022, the Student's IEP team met and developed a new IEP for the Student. The Student's IEP provided the Student the following SDI, provided by special education staff:
- Social/Emotional: 30 minutes/Weekly (special education setting)
 - Social/Emotional: 60 minutes/Weekly (general education setting)

The Student's total minutes per week in school were 1,825 minutes and 30 minutes per week were spent in a special education setting. The percent of time in a general setting was 98.36%.

14. A PWN, dated September 20, 2022, stated, in part:

The IEP team reviewed [Student's] current IEP and the progress he has made on his current goals. We have proposed a new IEP that includes updated goals for the areas his disability adversely impacts: social emotional. The IEP team has also proposed accommodations for the classroom and an addition of services being delivered through a resource room. The team also discussed a need for an assessment revision to add occupational therapy to [Student's] IEP.

The reason we are proposing or refusing to take action is:

Mom...requested an IEP meeting to discuss making some adjustments to [Student's] IEP. Parents were concerned about behaviors happening at school and wanted to address them through his IEP before any major incidents occur. [Student] receives ABA therapy at home. [Student's] BCBA attended this meeting to help facilitate the conversation around his behavior. In order for [Student] to participate with his general education peers appropriately, [Student] needs more intensive social emotional instruction. The team discussed [Student's] frustration surrounding writing. [Student] is easily fatigued when writing. The team agreed that an assessment revision for [occupational therapy] would be appropriate, and the occupational therapist [OT] was present to discuss her observations.

...

The team considered conducting an FBA (functional behavior assessment) to address [Student's] behavior. The team also considered adding a BIP (behavior intervention plan) to [Student's] IEP. Parents expressed concerns about academics. Parents are worried that

[Student] is becoming bored in class because he is not being challenged enough. Advanced testing/Highly Capable was discussed.

...

The team agreed that an FBA was not necessary at this point in time, and the special education teacher will collaborate with [Student's] BCBA to come up with a behavior plan with calm down strategies that will be communicated to all staff that works with [Student]. The team agreed that [Student] needs to be challenged more. Currently [Student's] true abilities are not being captured accurately in the district standardized assessments. [Student] is easily distracted, and due to his disability, he struggles to maintain focus while taking a timed test. The team agreed to have the special education teacher pull [Student] for some informal assessments to try and get a more accurate assessment of [Student's] abilities (in a controlled, quiet setting)...

15. On November 9, 2022, the Student's IEP was amended, and the Student was provided the following SDI and related services by special education staff:

- Social/Emotional: 30 minutes/Weekly (special education setting)
- Social/Emotional: 60 minutes/Weekly (general education setting)
- Occupational Therapy (related service): 30 minutes/Weekly (by an OT in a special education setting)

The Student's total minutes per week in school were 1,825 minutes and 60 minutes per week were spent in a special education setting. The percent of time in a general setting was 96.71%.

A PWN, dated November 9, 2022, stated, in part, that occupational therapy was added to support the Student's fine and visual motor skills and he "demonstrates delays" in those areas.

16. On February 7, 2023, the Student's 2022–2023 special education teacher (teacher 2) emailed the Parent:

At the last IEP meeting we had discussed meeting again to possibly amend [Student's] IEP and come up with a plan to help him be more successful in the general education setting...I would like to suggest to the team that we conduct an FBA. We have seen an increase in behaviors the last few weeks including: escaping demands, work avoidance, ripping items off bulletin boards, and using inappropriate language. [Student] is leaving the classroom more frequently and spending more time in the resource room and the office throughout the school day.

17. On February 9, 2023, the Parent emailed teacher 2 as follows, "[W]e really strongly feel that having a 1:1 for [Student] would be a solution to many of the issues arising. If he had a person with him keeping him accountable and redirecting as needed I think it would stop a lot of the behavioral issues before they arise."

18. On February 13, 2023, the Student's IEP was amended, and its services were scheduled to begin February 17, 2023. This IEP provided the Student the following SDI, provided by special education staff:

- Social/Emotional: 30 minutes/Weekly (special education setting)
- Social/Emotional: 150 minutes/Weekly (general education setting)
- Occupational Therapy: 30 minutes/Weekly (provided by an OT in a special education setting)

The Student's total minutes per week in school were 1,825 minutes and 60 minutes per week were spent in a special education setting. The percent of time in a general setting was 96.71%.

The IEP included the following supplementary aids and services:

Concurrent	Service	Service Provider	Frequency	Location
No	1:1 Paraeducator	Paraeducator	1,825 Minutes/ Weekly	General Education

19. A PWN, dated February 13, 2023, stated, in part:

The team met to discuss recent changes in [Student's] behavior and to discuss parent's request for a 1:1. The team proposed to make an amendment to [Student's] current IEP to add additional accommodations and modifications in order to better support his social emotional and behavior needs. The team also discussed conducting an FBA. The team also agreed that [Student] demonstrated a need for an emergency response plan due to safety concerns at parent pickup. The team proposed that [Student] requires a 1:1 paraprofessional support to be successful in the general education setting due to social emotional and behavior needs; district approved the 1:1 request.

...

Parents requested a 1:1 for [Student] to address his social emotional and behavior needs. There has been a significant increase in behaviors and the team is concerned about safety. [Student] requires a 1:1 paraprofessional support to be successful in the general education setting due to social emotional and behavior needs.

...

The team considered adjusting [the Student's] service minutes.

...

The team agreed that more data collection needs to happen before making any additional adjustments to his service minutes. The team agreed to wait until after the FBA was complete before making any additional changes.

20. On February 14, 2023, the Parent signed consent for an FBA.

21. On February 23, 2023, the Parent emailed the District as follows:

We were told he would have a 1:1 [paraeducator] last week. No one has been with him for a full day and he is continuing to spend his time in the resource room...I am very frustrated with the lack of communication regarding this matter. . .We need someone for [the Student] asap. He should have had someone with him when he transferred to the district with a 1:1 on his IEP. This is causing him to have a very difficult time and a lot of stress on our family.

22. On February 24, 2023, the director of special education (director) responded:

I have been working with [the teacher on special assignment (TOSA)] in regards to supporting [the Student's] needs at school, it sounds like he has brought you up to date on where we are with hiring the 1:1. We have requested a temporary 1:1 from an agency that we use to have in place while the building works to get a district applicant hired, unfortunately I'm not able to give a definitive timeline of securing a support person but know that we are following up daily.

23. On February 26, 2023, at 1:29 pm, the Parent emailed the District as follows:

I know we are starting the FBA process however I am requesting a reevaluation for [the Student] as well, to include, at least, the following:

Academics

Cognitive, non-verbal intelligence in fluid reasoning, nonverbal memory, attention and cognitive...

Fine Motor

Communication, diagnosed with a language impairment requiring substantial support (social communication/pragmatics).

24. On February 26, 2023, at 1:33 pm, the Parent emailed the TOSA:

It is important for me to point out that [the Student] is not in his Least Restrictive Environment listed on his IEP. Had the District not taken his 1:1 paraeducator off of his IEP when he transferred from the [other] District, [the Student] would not spend most of his day wandering around or in the resource room. He is not receiving the benefit of 'seat time' in his general education classroom.

25. On March 6, 2023, at 3:42 pm, the Parent emailed the principal as follows, "Do we have any update regarding a 1:1 for him?"

26. On March 6, 2023, at 8:08 pm, the Parent emailed the TOSA:

We are aware [the Student] still doesn't have any support at school and he's suffering from it as well as others in the school. He is now starting to shut down and stim and seek big sensory needs because he's not getting the help he needs. His IEP is not being followed. We have our next meeting on Thursday but this is time sensitive. Are we any closer to getting him a 1:1?

27. On March 7, 2023, at 2:43 pm, the TOSA emailed the Parent with an update that the 1:1 paraeducator position had been posted and that they requested a temporary paraeducator from an agency.

28. On March 7, 2023, at 2:44 pm, the Parent emailed the TOSA that she was frustrated because the Student was not being assigned his one-to-one paraeducator.

29. On March 7, 2023, at 3:11 pm, the principal emailed the Parent:

We were scheduled to hold interviews yesterday but our candidate accepted another job offer. We are reposting the position and will know more once the position closes. As for additional steps Special Services is taking outside of our posting and recruiting that would be something to follow up with the team on.

30. On March 7, 2023, at 6:35 pm, the director emailed the Parent:

Thank you for your email, you've been working with one of my team members (TOSA) who has been keeping me updated on the status of our work with [Student] and his IEP.

31. A PWN, dated March 9, 2023, documented a meeting with the Parent and stated:

Description of the proposed or refused action:

1. Review parent concerns
2. Discuss compensatory services
3. Review request for additional special education testing

The reason we are proposing or refusing to take action is:

1. Parent has concerns in regards to [Student's] academics, behavior and educational needs.
2. The District is proposing an offer of compensatory services, the parent has indicated that the 1:1 in the transfer IEP from [Student's] previous district...was removed without consideration to the needs of the student or concerns of the family.
3. Parent has submitted a formal request for additional special education testing, the team has determined this is not appropriate at this time.

Description of any other options considered and rejected:

The team considered the development of the Functional Behavior Assessment by the school psychologist and building team.

The reasons we rejected those options were:

The team rejected having the FBA solely completed by the school psychologist and instead will have the FBA developed with the support of the BCBA.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

1. Parent concerns from the meeting: [Student] needs a 1:1, parents are concerned that [Student] is struggling at school in gen ed class and during transitioning. He is not staying in class, having to go to resource class and staying in the class. Parent informed the team that he comes home exhausted and confused about what he is supposed to do.

...

Pending the hire of a District 1:1 to support [Student] the district will seek out an agency 1:1 staff member to support [Student], the District will provide support from the District office pending the start of the agency staff member. The 1:1 working with [Student] will receive training from a Board-Certified Behavior Analyst (BCBA).

32. On March 9, 2023, at 5:14 pm, the Parent emailed the director, "Can we have communication on who will be with [the Student's] daily until we have someone more permanent?"
33. On March 9, 2023, at 5:25 pm, the director emailed the Parent:
I'm going to start the day with [the TOSA] working with [the Student], because of the time of day most of my staff has gone home for the day so I haven't had a chance to review their calendars with them. I might switch him out midday, if I do I will let you know who it is with. I will work this weekend on putting together a calendar for the week, it may not be the same person each day because it's not their primary job and they support multiple buildings. I will get a schedule for you as soon as it is completed.
34. On March 10, 2023, the director emailed the Parent:
Our plan for today is to have [the TOSA] with [Student] until 11am, at 11am one of our district support staff will be working with him until the end of day...I am putting together a calendar for next week (we will do 1 week at a time with a hope we will have a permanent person on staff, until then we will staff the posting from the District office), I will share the names with you each week.
35. On March 12, 2023, at 4:29 pm, the director emailed the Parent:
This week we will be providing three different Student Response Specialists (SRS) personnel to work as [Student's] 1:1, we've asked the building to support a minimal amount that we

are not able to cover due to previous commitments. These individuals are all trained to provide behavior support, de-escalation strategies and are very knowledgeable when it comes to working with students with identified special education needs...I would expect, until the 1:1 is hired, these will be the three individuals who will be supporting, this way we are keeping consistency for [the Student].

36. On March 12, 2023, at 4:48 pm, the director emailed the Parent, "Please find the attached Prior Written Notice (PWN) from our meeting last week, if you need more time to consider the offer (we have noted by the end of the week) please let me know and I'll be happy to offer an extension."

37. On March 12, 2023, at 9:28 pm, the Parent emailed the director:

After reviewing the PWN we are not comfortable with a portion. We did not agree that waiting a few months to do a reevaluation was necessary-we just needed some time to process everything that was said and make a decision. Our decision being that we would like to request an IEE. We do not agree with the compensatory services. We do not feel that [the Student's] summer should get interrupted because the district didn't give him the support he has needed all year long. He has suffered emotionally enough already. We WOULD like to give him a week or so before the next school year starts to go in and get used to school again.

We would like [the Student] to have access to more OT services to greater improve his fine motor skills especially with writing. We believe this deficit is holding him back greatly. If he had the support he has needed all yearlong his writing would have been practiced with his classmates and teacher.

We would also like [the Student] to be more academically challenged in areas where he is already advanced. We would like him to have access to that material now vs waiting to test again for the gifted program.

I want to again reiterate how stressful this process has been for [the Student] and our family. He has been very emotional and filled with anxiety this year because he is very overwhelmed at school not getting the support he's needed.

38. On March 13, 2023, the director emailed the Parent:

Thank you for your email, below are my responses to your requests.

- I will correct the language in the PWN in regards to your agreement, I misunderstood, I thought you were in agreement on the eval but wanted time on the compensatory.
- I will note your request for the IEE, the District will consider your request and reach back out to you with a response in the next few days.
- The OT minutes are a determination made by the IEP team, please reach out to the team to reconvene for additional conversation around OT services.
- I will note on the PWN that you have declined the offer of compensatory with the exception of time during the last week of summer (week prior to school starting)

39. On March 14, 2023, at 1:46 pm, the director emailed the Parent, "I am reviewing the request for the IEE, can you tell me what areas of focus the IEE would be for (cognitive, academic, etc.)"

so that I can complete the request response? I want to make sure I am capturing what you are requesting.”

40. On March 14 2023, at 7:20 pm, the Parent emailed the director, “These are the areas we would like [the Student] evaluated in on his IEE: Cognitive; academic (reading, writing, math); social, emotional and behavioral; fine motor; other sensory processing.”
41. On March 15, 2023, the director emailed the Parent, granting the Parent’s request for an IEE.
42. On March 20, 2023, at 2:58 pm, the director emailed the Parent, “Thank you, let me see who our surrounding districts are using...maybe I can widen the net a bit.”
43. On March 20, 2023, at 3:27 pm, the Parent emailed the director:

I have been researching a place to get the evaluation done since we received your email. Unfortunately, the list is very outdated and a lot of the people on the list are retired or don’t do IEEs at all. I am still waiting for a callback from many places. [Student] happens to see his developmental pediatrician Wednesday so maybe I can get some information then. Just wanted to keep you in the loop that it’s really difficult to find a place that does comprehensive evaluations.
44. On March 21, 2023, at 3:08 pm, the Parent emailed director:

We have decided to go with [Provider 1]. She can do all of the evaluations except for fine motor. I tried to call [Provider 2] that is on the list for motor evaluations but her phone number has no voicemail and I haven’t been able to get a hold of her. [Hospital] doesn’t do any IEE’s unless the child has a life-threatening disease. Are we able to use one of [Provider 1’s] OT referrals for [the Student’s] fine motor evaluation?
45. On March 21, 2023, at 3:48 pm, the director emailed the Parent, “[Provider 1] is for social/emotional and [the Student] already qualifies for social/emotional. We don’t contract with [Provider 1] for cognitive. The...County Director group is developing an updated list that I’ll have available on Thursday if you would like.”
46. On March 21, 2023, at 4:50 pm, the director emailed the Parent:

I wanted to let you know that we have been able to secure an agency 1:1 staff member to support [the Student] pending the permanent position being filled. I am hoping this gives him some consistency with support, we’ve been rotating three different staff members through for the last week, although they’ve been very supportive it is most beneficial to have consistency.

I will be sending our BCBA to support the 1:1 as she gets started and we will be providing her with the training she needs to work with [the Student].
47. On March 21, 2023, at 6:05 pm, the Parent emailed the director:

In your letter you stated that you agree that he will get assessments in all the areas we asked-that includes social/emotional.

[Provider 1] has the credentials to do all the other areas except motor. I've contacted every other person or agency and over half of the people on your list don't do them at all or don't have openings until summer.

This is the list you provided me-with request to provide you with who we chose by tomorrow. I've followed through with your request. It is not our fault that your list is not updated.

I am not going to wait anymore to get my son the help he needs. I am going above and beyond for him so I need the district to do the same. I'd like [provider 1] to do all of the evaluations we agreed upon except fine motor.

If there needs to be an exception made for us then so be it. We are jumping through what seems to be impossible hoops just so our son can get the education he needs and that is absurd.

48. On March 21, 2023, at 6:08 pm, the director emailed the Parent that the District no longer contracted with provider 1 to perform IEEs.
49. On March 21, 2023, at 6:13 pm, the Parent emailed the director, expressing frustration regarding trying to schedule an IEE.
50. On March 21, 2023, at 6:19 pm, the director emailed the Parent, stating that she would be happy to help the Parent do research on IEE providers.
51. On March 23, 2023, at 12:49 pm, the Parent emailed the director, "Just wondering when the updated list will be available?"
52. On March 23, 2023, at 3:47 pm, the director emailed the Parent, "Here is some of it, we are still waiting to get additional information...[Student's] 1:1 started today, I'm hoping it will be a good match and she'll want to apply for the permanent position!"
53. On March 23, 2023, at 4:39 pm, the Parent emailed the director, "So that list is still very outdated. I called most of those companies and they literally do not do IEEs. Surely I'm not the only parent requesting an IEE I don't understand why it's so difficult to have a updated list."
54. On March 23, 2023, at 4:41 pm, the Parent emailed the director, "Also what are the parameters on who can do the evaluation? Do I have to find one person from each category he's being evaluated in? If that's the case then it'll be near impossible. How does that work?"
55. On March 23, 2023, at 5:43 pm, the director emailed the Parent:

This list was just recently updated, that's frustrating to hear that you are still getting people who are saying they don't do them. Our surrounding districts are also having similar issues, which is why they grouped together to build a better list and why I mentioned that we were going to be getting additional names...

Some of the names are listed multiple times under different areas of assessment, I think I included our parameters in the initial email but I've attached another copy here.

I will send more names as I am able to get them.

56. On March 23, 2023, at 6:29 pm, the Parent emailed the executive director of special education (executive director):

I believe you have been included in some of the conversation regarding my son...He...has an IEP, and we have been fighting non stop to get him the help he needs to be successful in his school day. He has been declining throughout the school year and ultimately was spending his entire day in the resource room-against his IEP-and not doing any learning.

We have recently been granted his 1:1 para support back on his IEP as it was removed when we transferred...even after we told the district at the time that we were not comfortable with that. We now know we should have started fighting then.

Now we are in the position where [the Student] has been struggling everyday, the school is struggling to manage him, it's been a very stressful, taxing time on a lot of different people, including my 6 year old son. We are now in the position where we have requested an IEE-[director] has granted it and we are trying to get this IEE arranged. I have gone above and beyond contacting every person on the list that [director] originally sent me. The list is very outdated. I found ONE person on the list that could do [the Student's] IEE in the near future. It turns out we can't use her. [The director] said you don't contract with her anymore. Now we have a new list. The new list has the same exact agencies on it that DO NOT do IEEs or are retired.

I am beyond frustrated with the way the district is handling this situation and I am beyond frustrated with the lack of compassion and help that [the director] has been. I have shared my frustrations with her many times and I feel like it gets overlooked every time.

I would think, with all of the parents that the district works with, you would be the most willing to work with the parents that actually work as hard as they can to do everything they can for their child. If we are struggling this much to get our son the services that he is legally obligated to have, I am terrified to know how many students in our district are not getting what they need at all.

I feel like we have struggled way more than necessary. We need my son to get an IEE ASAP-the fact that the district does not have a proper list should not hinder this process. I am asking for an exception with contracting of agencies or help finding someone now.

57. On March 24, 2023, the executive director emailed the Parent, "I appreciate your patience. I have staff calling each name on the list to ensure its accuracy. This should be completed by Monday or Tuesday at the latest. We will be sending the list to you as soon as possible."

58. On March 28, 2023, at 4:25 pm, the executive director emailed the Parent, "I had staff members call through our approved list to ensure all the numbers were still working with families. I hope this helps."

59. On March 28, 2023, at 4:36 pm, the Parent emailed the executive director:

[Hospital] doesn't do them unless the child has a life threatening disease, [provider 3]...is no longer doing them and retired the end of this month, [provider 4] is no longer practicing...

So that leaves us with maybe one or two options. This list isn't comprehensive.

Is there a way to get an exception on who we can see? I find it hard to believe we have such a limited choice on where we can go.

60. On April 4, 2023, the executive director emailed the Parent:

We told you that we could possibly give you additional contract names for IEE consultants once the...County SpEd Directors had updated their list. Unfortunately, the list they provided didn't have many additional names, and the new names on the list we were not able to verify are still in practice. I met with [the director] today and she shared that originally you had requested [provider 1]...who is no longer on our approved IEE list. Given the limitations on current practicing IEE consultants on our list, we will approve [provider 1]. We still need to follow the...[procedure] related to IEEs. Please let us know if you would like to proceed.

61. On April 11, 2023, the executive director emailed the Parent:

We have vetted this list of names to verify they are still completing IEEs. I'm sorry, it didn't look like the attachment came through. Just a reminder, we cannot guarantee when the IEE will be completed since these are outside providers, but we're hopeful one of these resources will be able to work for you [the names of three providers were provided].

62. During the complaint investigation, OSPI sent the Parent follow up questions about the IEE:

It is my understanding that on April 4, 2023 the District approved you using [Provider 1] to perform the IEE...If so, has [Provider 1] performed the IEE? When? If so, did [Provider 1's] IEE cover all the areas that you requested?

The Parent replied in part:

Yes they did after initially denying that I could use her when she had availability. Originally when they gave me the list of approved people to do IEEs for the district she was listed and she had availability. I told the district I would use her and they told me I couldn't. After arguing with [director] via email over a few weeks and contacting OSPI they finally agreed to let me use her. By then [provider 1] had no availability for us as she was slowing down her practice.

The list the district gave me was outdated- none of the people on the list (a list of about 50) was practicing anymore or had any availability for months and months. They finally narrowed the list down but it still was not accurate as I called every place on the list and could not get the services. I've since given up on getting my son an IEE because I can't afford to pay for it and the district did not provide us with an appropriate place to do it.

63. On April 24, 2023, the Parent filed SECC complaint 23-58, alleging:

1. The district did not transfer my students IEP from previous district and took a 1:1 para off.
2. My students IEP was not being followed and it took months of us fighting with the district for a change to take place.
3. We requested an IEE as my student is still not getting the help he needs and the district is preventing the approved IEE from happening, until OSPI was contacted and had to get involved.

64. On May 19, 2023, the District submitted its response. Regarding the first issue, the District responded, in part:

While the Parent may opine that the District should have implemented the IEP as developed [by the other district], doing so was impossible due to the vague description of services and inconsistencies between the areas of service and goals. The Parent may also assert that the Student has 'always' needed a 1:1; however, the Student had not been in school for over 6 months and developmental changes between preschool and kindergarten are significant.

And the status quo can be changed upon parent agreement, and that is what happened for the Student. Because the Student had not been in a school setting and was new to the District, the IEP team, including the Parent, agreed to a wait and see approach to determine how he would reintegrate into a school setting. In the interim, the District agreed to complete a new evaluation.

And the Student did well. He was in a general education class with the support of two aides and had no behavioral incidents that were outside the expected behaviors of peers.

He did so well that upon completion of the May 27, 2022 evaluation, and the development of the new IEP on June 14, 2022, the IEP team decided to reduce the total services, removing the communication and adaptive areas. The team, including the Parent, agreed that the Student was best served via a push in model in the general education setting and did not require 1:1 support.

Regarding the second issue, the District responded, in part:

There is no evidence that the District did not implement any part of the IEPs. Instead, the evidence establishes that not only did the District implement the IEPs, but amended them as appropriate based on new information. The District implemented the June 14, 2022 IEP after it was developed, pushing in services and providing the Student instruction in the general education classroom. The District continued to implement that IEP the following fall, and amended that IEP in accordance with the November 9, 2022 Revision Assessment to include goals for occupational therapy.

When the Student's behavior escalated, the District appropriately began to collect data and took steps to amend the IEP again on February 13, 2023. While the District did not immediately have a 'designated' paraeducator, the District did provide personnel to support the Student.

Regarding the third issue, the District responded, in part:

WAC 392-172A-05005 requires that the evaluation be provided without unnecessary delay. However, any delays not due to purposeful action by the District cannot be contributory toward an 'unnecessary' delay. For example, many examiners have months-long backlogs of evaluation requests. Similarly, a lack of availability of IEE providers is not the fault of the District and does not constitute an 'unnecessary delay.'

When the Parent identified a former District employee as an IEE provider, the District appropriately pointed out the limitations of that provider. However, upon the Parent's insistence to proceed, the District ultimately agreed.

65. On May 19, 2023, the director signed a declaration in response to this complaint that stated as follows:

...

2. I learned that the Parent had concerns about the Student's educational services in February 2023. The primary complaint involved an escalation of behavior and the Parent was seeking the addition of a 1:1 paraeducator.

...

4. I worked with the IEP team and learned that the Student had increased behaviors since the beginning of the 2022-2023 school year. I assigned ...Sped TOSA...to provide additional support to the IEP team for the February 13, 2023 IEP meeting.

6. The February 13, 2023 IEP team discussed the increase in behaviors and determined that the data did support an increase in service minutes as well as the provision of a 1:1 paraeducator.

...

8. ...I also learned that the District continued the evaluation started by [the other district] and that while the Student did continue to qualify for social emotional services, his behaviors did not warrant the restrictive provision of a 1:1 paraeducator or behavior specialist as he was behaving with expectations from May 2022-June 2022.

9. Additionally, the IEP team met June 14, 2022 and the team determined that the Student required 60 minutes of push in services without 1:1 support. The team met again on September 20, 2022 and November 9 2022. At no time during these meeting did the team change the Student's provision of services to add a 1:1 support.

10. The District was unable to hire a paraeducator to support the student immediately upon implementation of the February 13, 2023 IEP. Therefore, I initiated the process to hire temporary paraeducators through contract agencies to work with the Student and provide support.

11. In addition, the District provided the Student with 1:1 support with member of the SRS or Student Resource Specialist team. The SRS team are specially trained paraeducators who receive specific training on behavior response techniques.

In addition, I assigned [the TOSA] to provide support for the Student. The Student responded positively to both the SRS and TOSA support.

...

13. I was able to hire a 1:1 paraeducator to support the Student on March 23, 2023. The 1:1 paraeducator has been working with the Student and receiving on-going training.

...

16. The Parent has also asked for an...IEE at public expense. The District agreed due to the escalation of behaviors and agreed to look at the areas requested.

17. The District provided a copy of the District policies for the provision of IEEs at public expense as well as a list of providers. Unfortunately, since the list was generated, many of the providers no longer do educational evaluations.

18. ...the Parent selected a former District employee who was not on the approved provider list. Further, the Parent wanted evaluations for which [provider 1] was unable to do, such as occupational therapy.

19. ...in an effort to work collaboratively with her, the District agreed to [provider 1]. However, the Parent did not respond to our agreement with the provider for the portions of the evaluation that she could conduct.

66. On May 19, 2023, the teacher 2 signed a declaration in response to this complaint that stated as follows:

1. I am the Student's special education teacher...for the 2022-2023 school year.
2. I began providing services for the Student pursuant to the June 14, 2022 IEP...The Student was in a general education classroom with push in social-emotional services.
3. The Student...did not require significant support during the first half of the 2022-2023 school year. I did document some incidents that rose to more disruptive behavior, such as pulling his pants down to show his bottom on September 21, 2022 or being disobedient and failing to cooperate on November 3, 2022. Overall, the Student was doing very well.
4. Despite the comparatively low level behaviors, the Parent was concerned. We met as an IEP team on September 20, 2022 and agreed to increase his social emotional minutes with 30 minutes pull out services in the special education setting.
5. The Student's behavior began to escalate toward the end of the first semester and upon return from winter break. I had been communicating with Parent and the Student's private BCBA, and I learned that the Student had a gap of services at home with the private services around this time.
6. I began to start tracking the Student's behavior when I noted an escalation in his behavior to determine whether there were any patterns. The Student became resistant to return from breaks or had difficulty with transitions, which is when we would see more disobedience type behaviors. He also had an escalation of behaviors to include physical harm when he would return from unstructured time, such as recess, being home from being sick, or vacations. By December 15, 2022, he had three incidents of physical harm.
7. We began by providing him some extra support by sending an adult outside during recess to watch him. I also worked with his private BCBA to develop some ideas and strategies to assist him.
8. The Student's behavior escalated after winter break to the point of impacting the instruction of students around him.
9. We met the Parent on February 13, 2023 to amend the Student's IEP. The team determined that the Student's social-emotional services would be increased from 120 minutes of push in services to 150 minutes. In addition, the Student would receive the support of a 1:1 paraeducator in the general education setting.
10. In addition, the Parent agreed to allow the District to conduct a [FBA], and the team developed emergency response protocols.
11. The District had difficulty getting a paraeducator right away. However, the District did place an adult with the Student via the Student Resource Specialist team (SRS), a team of paraeducators who are specially trained to provide behavior supports. In addition, other members of the special education team supported the Student, include the Teacher on Special Assignment, a special education teacher with additional training.
12. The District was able to hire a 1:1 paraeducator for the Student in March 2023. The para is being trained directly by the District's BCBA.
13. The Student has been responding well to increased behavior interventions, behavior techniques, increased structure, and redirection.
14. The FBA is near completion and the team will be meeting shortly to discuss the data and develop a behavior improvement plan.

67. On May 30, 2023, OSPI asked the Parent about her allegations that the 1:1 paraeducator was removed and the implementation and amendment of the IEP, specifically:

Regarding the first allegation, you are referring to the November 2021 IEP from the [other] District.

Regarding the second allegation, are you referring to the November 2021 IEP or are you referring to the June 14, 2022 IEP that was created by the [current] District?

On the same day, the Parent replied, in part:

2)RE: June 14 2022 IEP. [Student] spent a huge majority of January February March 2023 not in the classroom, not following his IEP at all and we had conversations multiple times even in [IEP] meetings requesting that he needs more support and nothing happened until more recently in April. Even then when they finally added the 1:1 back-I had to call the district multiple times a week to get someone to actually be a 1:1 for him. We had to have many many conversations and send many emails to get anything done for [Student]. I know that we go above and beyond for our kids and it saddens me to think of the students that don't have that support. They just slip through the school system without help.

On June 1, 2023, OSPI asked the Parent follow up questions about the provision of the 1:1 paraeducator. The Parent responded that the 1:1 was added to the Student's February 17, 2023 IEP but not provided until around March 13, 2023, according to the Parent. The Parent stated:

I had to call the district multiple times and we had a zoom meeting on March 9 in order to finally get him some support.

Starting March 13 they provided people from the district to support him and then they were able to get a para from [agency]. The first para was not working for [the Student] so the principal from [an] elementary was very supportive of [the Student] and got a new para from the agency that had been a wonderful fit for [Student].

68. On June 1, 2023, OSPI sent the District the following question, "When was 1:1 support on a full day basis first provided for the Student?"

The District responded with a document that provided March 13, 2023 as the first day that the Student was provided his one-to-one paraeducator on a full day basis.

The director signed an amended declaration in response to this complaint that stated, in part, as follows, "Pending the hiring of a paraeducator, the District provided the Student with the 1:1 support as identified in his IEP immediately with qualified District staff starting on February 17, 2023."

69. On June 6, 2023, OSPI sent the District follow up questions regarding teacher 1's provision of comparable services when the Student transferred into the District. On June 8, 2023, the District responded:

[Teacher 1] is no longer with the...District and moved [out of state] for the 2022-2023 school year. However, when posed this question to [the director, she responded]:

...

We would begin immediately providing special education services, although we didn't accept the incoming IEP we did honor the services of SDI pending the new IEP.

70. On June 9, 2023, the Parent sent OSPI an email that stated, “[W]e officially unenrolled my son...Today was his last day.”

CONCLUSIONS

Issues One: IEP Transfer – Regarding the first issue, the Parent has alleged that the District did not transfer the Student’s IEP from the previous district and removed the Student’s one-to-one paraeducator.

If a student eligible for special education transfers from one Washington state school district to another Washington state school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student’s IEP, until the new school district either: adopts the student’s IEP from the previous school district; or develops, adopts, and implements a new IEP. “Comparable services” means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student’s new district. Additionally, the new district must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services.

IEP Transfer Procedures

In the present case, the Student started the 2021–2022 school year in another district as a kindergartener. His November 1, 2021 IEP provided SDI in adaptive skills, social/emotional/behavior skills, and communication for 30 minutes per week in each area. Additionally, the Student was also supposed to receive behavior support by a BCBA (380 minutes/four times per week) and a behavioral specialist (180 minutes once a week). The IEP did not specifically provide a “one-to-one” reference for these services or include, specifically a one-to-one paraeducator. Additionally, from November 2021 until May 2022, while the Student attended the other district, he was home schooled and went into school at the other district once a week for his SDI.

The District received the Student’s November 2021 IEP in April 2022, and a PWN, dated April 25, 2022, drafted by the District, raised concerns regarding the Student’s November 2021 IEP, including that the one-to-one support was not included in the IEP’s service matrix. The PWN also documented that the Student was going to be attending school full time, but the November 2021 IEP’s LRE was marked as the “Home Schooled/Part-Time”. For these reasons, the District rejected the Student’s November 2021 IEP and determined a reevaluation was warranted and a new IEP needed to be developed. Upon rejecting the Student’s November 2021 IEP, the applicable regulations provided that the District had the responsibility to adopt a new IEP within a reasonable amount of time and provide comparable services to the Student.

On May 27, 2022, the Student’s evaluation team met, and the evaluation showed that the Student continued to be eligible for special education and needed SDI in social-emotional skills (however, the evaluation found the Student no longer had a need in adaptive or communication). On June

14, 2022, 28 calendar days after the Student began attending school in the District, the IEP team held a meeting to review a proposed IEP. This IEP increased the social/emotional/behavioral services to 75 minutes a week, but eliminated the Student's adaptive and communication services based on the May 2022 evaluation, and made no reference to the services provided by the BCBA and behavioral specialist in the November 2021 IEP.

According to teacher 1, during May and June 2022, the Student "blended in very well with the other students in the [general education kindergarten] classroom" and no disciplinary incidents occurred during this time period. Additionally, according to teacher 1, the "Parent did not disagree with the updated services," despite the Parent emailing the District on June 1, 2022, that there was "concern about some of the behavior issues we are already seeing reported back to us from school."

Based on the present case's facts, it was reasonable for the District to reject the Student's November 2021 IEP that was transferred to the District. Additionally, the District acted in a timely manner in conducting an evaluation (completed within two weeks of the Student beginning his instruction in the District), and proposing an IEP on June 14, 2022, 28 days after the Student's first day in a District school. Thus, OSPI does not find a violation as to the District's actions in the present case regarding transferring the Student's IEP from another in-state district.

Comparable Services

Upon the Student arriving at the District, the District was required to provide the Student SDI services comparable to the Student's November 2021 IEP, even if the District rejected this IEP. These comparable services needed to be in place from the point when the Student first attended the District's school until the day when the District implemented its own IEP on June 14, 2022. In the District's June 8, 2023 email, the director claims that the Student was provided SDI services comparable to the SDI services from the Student's November 2021 IEP from mid-May through mid-June of 2022. The Student's special education teacher stated she "provided push-in services in the general education classroom. The Student had no disciplinary incidents and blended in very well with the other students in the classroom. The Student performed wonderfully..." Thus, based on present case's record, OSPI does not find a violation regarding comparable services, nor a violation regarding this case's first issue.

Issue 2: IEP Implementation – Regarding the second issue, the Parent alleged that the Student's IEP was not being followed. Upon investigation, the Parent's primary concern regarding IEP implementation was the failure to provide a one-to-one paraeducator.

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 child with a disability and those required by the IEP.

In the present case, on February 13, 2023, the Student's IEP was amended to include a one-to-one paraeducator, and on February 17, 2023, that IEP was supposed to go into effect. In her

amended declaration, the director stated that “[p]ending the hiring of a paraeducator, the District provided the Student with the 1:1 support as identified in his IEP immediately with qualified District staff starting on February 17, 2023.”

Despite, the director’s declaration, the present case’s emails do not clearly support her position. On February 23, February 26, and March 6, 2023, the Parent sent the District emails that either asked when a one-to-one paraeducator would be assigned to the Student or expressing frustration that no one had been assigned to the Student. In the emails provided to OSPI, the District did not dispute the Parent’s statements in the three emails or correct the Parent if her statements were incorrect. It was not until the March 9, 2023 email that the District clearly responded to the Parent that someone was going to be assigned to the Student in a one-to-one capacity. Based on the facts just provided, OSPI finds that the District did not provide that one-to-one support for the Student until about March 9, 2023, or more than three weeks after the Student was supposed to receive the support. The failure to provide the one-to-one paraeducator support impacted the Student’s ability to benefit from the services provided. This establishes a material failure to implement the Student’s IEP and thus, OSPI finds a violation regarding the second issue.

Based on this violation, compensatory education will be awarded to the Student using the Student’s February 13, 2023 IEP. From mid-February through March 9, 2023, approximately three weeks of school elapsed and during this time the Student was entitled to SDI as follows:

- 90 minutes in social/emotional in a special education setting.
- 450 minutes of social/emotional in a general education setting.
- 90 minutes of occupational therapy by an OT.

Issue 3: IEE Request – Regarding the third issue, the Parent alleged that she requested an IEE, and the District prevented the approved IEE from happening.

Parents of a student eligible for special education have the right to obtain an IEE of the student at public expense if they disagree with the district’s evaluation. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district’s criteria for IEEs. If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner must be the same as the criteria that the district uses when it initiates an evaluation, to the extent those criteria are consistent with the parents’ right to an IEE. The district must ensure that the IEE is provided at public expense without unnecessary delay.

On March 12, 2023, the Parent requested an IEE, and on March 15, 2023, the District agreed to it and provided the Parent a list of providers. On March 20, 2023, the Parent informed the District that many providers on the list were retired or no longer doing IEEs and that she was waiting for a call back from some places. The District responded by contacting surrounding districts to try to get more names of providers.

Over the next few weeks, the parties exchanged numerous emails about the providers, but the District could not come up with many more provider names and the providers who were still doing

IEEs had waiting lists several months long. When the Parent did choose a provider (provider 1), the District informed the Parent that the District no longer contracted with that provider, but the District subsequently changed its decision on April 4, 2023, and approved an IEE by provider 1. Despite this, the Parent could not get the IEE done because provider 1 had no availability and was slowing down her practice.

It is unfortunate that the Parent could not have an IEE performed, and OSPI understands the Parent's frustration. At the same time, the District immediately responded to any questions or concerns the Parent had about the IEE, including trying to provide the Parent an updated IEE provider list multiple times. OSPI notes that districts must have a criteria for IEEs (location of examiners, required qualifications), but a district is not necessarily required to maintain a list of providers nor should a district select the provider a parent should use as that would go against the IEE being "independent"—in other words—a provider selected by a parent. Unfortunately, the Parent was not able to arrange an IEE because many providers are no longer performing IEEs, or the providers are not available to perform the IEE for months. Here, the District timely responded to the Parent's request and took reasonable actions in response to the Parent's questions and concerns. For this reason, OSPI does not find a violation regarding the third issue.

Even though OSPI does not find a violation, it is unfortunate that the Parent experienced such difficulty locating a provider to complete the IEE. OSPI recommends the District explore collaborating with the ESD and/or regional district partners to periodically update the list of potential IEE providers and when and whether a teletherapy evaluation may be appropriate.

Finally, the Parent has expressed that she has given up on trying to get an IEE. OSPI recommends that the District contact the Parent to determine if she is still interested in getting an IEE.

CORRECTIVE ACTIONS

By or before **September 15, 2023** and **December 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 30, 2023**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- 90 minutes in social/emotional in a special education setting.
- 450 minutes of social/emotional in a general education setting.
- 90 minutes of occupational therapy by an OT.

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, with the support of a one-to-one paraeducator in the group setting. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed

instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **September 15, 2023**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. By or before **November 30, 2023**, the compensatory education must be completed. By or before **December 15, 2023**, the District will provide documentation to OSPI that it has completed the corrective actions.

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 **December 15, 2023**.

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 16th day of June, 2023

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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