

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-105

PROCEDURAL HISTORY

On July 7, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On July 7, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 10, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 26, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to August 3, 2023.

On August 3, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On August 17, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On August 24 and 29, 2023, OSPI requested additional information from the District. The District provided the additional information on August 30, 2023, and a copy was provided to the Parent on August 31, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on July 8, 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. During the 2022–23 school year, did the District follow proper procedures for providing the Student with a shortened school day?
2. Beginning March 2023, did the District follow proper procedures for responding to the Parent's request for compensatory education?
3. In the following instances, did the District follow proper IEP development procedures and proper parent participation procedures:

- Beginning January 2023, did the District follow proper procedures for responding to the Parent's request that Student be provided with certain assistive technology supports?
- To the extent a decision was made in March 2023 to reduce the Student's IEP minutes and/or eliminate speech, were these decisions based on sufficient, relevant data on the Student's needs resulting from the Student's disability?
- With the June 2023 IEP, were decisions in the following areas based on sufficient, relevant data on the Student's needs resulting from the Student's disability: the need for applied behavior analysis therapy; support for transitions between different physical environments; the setting for speech services; a toileting plan; the need for specialized transportation; use of a communication-assistance device; and paraeducator support?

LEGAL STANDARDS

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parents to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Development: When developing each child's 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.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP

for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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

Consideration of Special Factors: In developing, reviewing and revising each student's IEP, the team must: consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior; consider the language needs of the student; consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the student's mode of language and communication; and whether the student needs assistive technology devices and services. 34 CFR §300.324; WAC 392-172A-03110(2).

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. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy

between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

Present Levels: IEPs must include a statement of the student's present levels of academic achievement and functional performance, including: how the student's disability affects the student's involvement and progress in the general education curriculum; or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. 34 CFR §300.320(a)(1); WAC 392-172A-03090(1)(a).

FINDINGS OF FACT

1. At the start of the 2022–23 school year, the Student was three years old, was eligible for special education services under the category of developmental delay, and attended preschool located at a District elementary school.
2. The Student's preschool is an early childhood education and assistance program (ECEAP). ECEAP is not a District program. It is organized and overseen by the local educational service district (ESD) personnel.
3. The Student's June 9, 2022 individualized education program (IEP) was in effect at the start of the 2022–23 school year and was based on an evaluation completed on June 9, 2022. The June 2022 evaluation recommended specially designed instruction (SDI) in the following areas: cognitive, communication, adaptive, and social/emotional, and noted a related services need in "fine motor."
4. The Student's June 9, 2022 IEP provided the Student with 1,735 minutes of education per week, with 240 minutes per week to be served in a special education setting. The Student was to spend 86.17% of time in a general education setting. The IEP called for the following SDI in a special education setting:

- Speech/language: 30 minutes, one time a week (to be provided by special education staff)
- Adaptive: 20 minutes, three times a week (to be provided by special education staff)
- Cognitive: 20 minutes, three times a week (to be provided by special education staff)
- Social/Emotional: 20 minutes, three times a week (to be provided by special education staff)

The IEP also specified a related service in a special education setting:

- Fine Motor: 30 minutes, one time a week (to be provided by an "OTR/COTA" and monitored by occupational therapist (OT))

The IEP indicated the Student would be transported via regular transportation.

5. The District's preschool school year began on September 12, 2023.
6. According to the Parent, on the first day of school, the ECEAP coordinator told the Parent that they would be reducing the Student's schedule to two hours daily because of staffing issues, but told her that the Student would transition to his full schedule within four to six weeks. According to the Parent, this never occurred, despite repeated requests beginning on November 16, 2022.
7. According to information from the District, beginning on September 19, 2022, the ECEAP administrator modified the Student's schedule, and he attended school on Mondays from 7–10:45 am and Tuesday through Fridays from 8–10:15 am. There is no evidence that the ESD communicated this change to the District or that an IEP team meeting was convened to consider this change.
8. On December 12, 2022, the Parent asked the Student's ECEAP teacher to contact the special education teacher to set up an IEP meeting. An IEP meeting was scheduled for December 19, 2022. According to the Parent and emails she provided, this meeting was canceled and rescheduled to January 9, 2023.
9. According to the Parent, an IEP meeting was held on January 9, 2023, and during this meeting, the Parent requested that the Student's full day schedule resume in accordance with his IEP and she requested amendments to the Student's IEP goals and related services. Specifically, she asked for services for the Student's communication needs and assistive technology. It was agreed that data would be collected for four weeks.
10. According to the Parent, after January 9, 2023, no changes were made to the Student's IEP and the Student's preschool time did not increase, but the District agreed to start tracking data regarding the Student's communication.
11. The District provided a copy of a meeting invitation that indicated that this meeting was "a speech focused IEP meeting requested by the [P]arent." The District did not provide any other documents that related to the January 9, 2023 IEP meeting, such as meeting minutes, an amended IEP, or any prior written notice (PWN) sent to the Parent to document decisions made at the IEP meeting.

According to email information provided by the District, beginning on January 11, 2023, the Student began attending school from 7:30–10:30 am. Additionally, the District provided data tracking information to support that data was tracked for the Student beginning on January 17 and tracked through March 28, 2023.

12. According to the Parent, an IEP meeting was scheduled for February 9, but then was rescheduled to February 21, 2023. However, an email provided by the Parent, from the student services administrator to the Parent about the meeting, stated that the February 9, 2023 meeting “is not an IEP meeting. It is a meeting to discuss progress.” Further, the meeting invitation provided by the Parent for the meeting on February 21, 2023, indicated it was a “team [Student] training with [speech language pathologist] SLP.”
13. Emails exchanged between the student services administrator, SLP, the ESD ECEAP coordinator, and the Parent between February 22 and 27, 2023, indicate that at the February 21, 2023 meeting, the Parent again requested an IEP meeting, an increase in speech services, and access to a communication device for the Student to use at home and school.
14. On March 21, 2023, an IEP meeting was held, and the Parent was provided a draft IEP for discussion. The Parent attended with her advocate. The Parent did not agree to the proposed draft IEP, as it was the Parent’s position that it reduced the Student’s IEP minutes and it did not include speech services, nor any accommodations or related services. The Parent also requested compensatory services for the educational time the Student had missed since September 12, 2022, and requested an independent educational evaluation (IEE).

At the end of the March 21, 2023 IEP meeting, after lengthy discussion, it was determined that the Student’s IEP should be amended, and an amendment meeting was scheduled for March 24, 2023, at 7:30 am. Additionally, it was determined that the District would reevaluate the Student. According to the Parent, she was told that the District was not obligated to provide compensatory education for general education minutes, even though his IEP stated a full day of services as his least restrictive environment.

15. A PWN, dated March 21, 2023, stated that the District was proposing to “continue” an IEP. The PWN stated the Student’s:

IEP was implemented prior to him attending school in the ECEAP program. A new IEP was requested by his parent at this time to consider information and results from [the Student’s] most recent medical appointments. Additionally, [the Student] is transitioning to a new communication method utilizing a device. Though the IEP is not due to be updated until June 2023 these factors made updating the IEP at this time the most appropriate choice.

The PWN also stated, “A review of [the Student’s] previous IEP and evaluation (2022), teacher feedback, paraeducator feedback, collected data, medical information conveyed by the parent, and input from parent, speech pathologist, and occupational therapist were used as a basis for action.”

16. The Parent provided a copy of the March 21, 2023 IEP. The IEP provided the Student with 840 minutes of education per week with 100% of the time spent in a general education setting.

The IEP did not include speech/language services, nor any fine motor services. The IEP called for the following SDI in a general education setting:

- Adaptive: 30 minutes, three times a week (to be provided by special education staff)
- Cognitive: 30 minutes, three times a week (to be provided by special education staff)
- Social/Emotional: 30 minutes, three times a week (to be provided by special education staff)

The IEP provided 11 accommodations and stated that support for school personnel was to include "Para Educator Classroom Support", "As Needed for SDI", in the classroom setting from March 22, 2023 to March 21, 2024. The IEP also indicated the Student would be transported via regular transportation.

Meeting notes from the March 21, 2023 meeting indicate that at the meeting, the Parent requested more speech therapy, more general education time, proximity to the paraeducator for the full duration of the school day, and that the communication device be with the Student daily. The meeting notes also indicated that a full reevaluation was to occur and the Student's time in preschool would be increased to noon. The paraeducator would be available until 11:30 am. The Student's IEP was to include a toileting plan and the team would meet again Friday morning, March 24, 2023. The notes also stated, "include amended minutes (phrase as compensatory until noon), toileting plan, include family strengths, sign eval consent and release of records."

17. On March 22, 2023, the District provided another PWN to inform the Parent of the following:
- The team met and discussed the amount of time [the Student] spends in general education. Beginning March 27, 2023 [the Student] will attend the ECEAP program from 7:30-12:00 (currently 7:30-9:30). A special education para will be in the classroom from 7:30-11:30 to support [the Student] as needed. The IEP team also proposed a new evaluation to better understand and meet [the Student]'s needs. [The Student]'s speech services were also increased from 30 minutes once a week to 30 minutes twice a week.

It also stated that the team had discussed a full-day ECEAP placement and that idea was "considered and rejected." The stated rationale was that it was not in the Student's best interest, and it was "more appropriate to increase the Student's school day in small increments." The PWN further noted that the Parent had agreed to a new reevaluation, requested any notes of the meeting, and that the ECEAP team will follow the Student's toileting plan as needed with the increase of his school day. It also stated, "At this time mom is providing a communication device. [The Student] will use it at school."

18. Another IEP meeting was held on March 24, 2023. During that meeting, the Parent signed consent for the Student's reevaluation. According to the Parent, she was told that she "had to accept" the Student being in school for only half a day.
19. According to a March 24, 2023 email sent from the District's student services administrator to the Parent, the meeting was set up for the Parent "to sign consent for reevaluation and to amend [the Student]'s current IEP." The student services administrator stated that the PWN for this meeting indicated that the Student's IEP minutes have always been in compliance, speech minutes were being added, and the Student would start attending the ECEAP

preschool program from 7:30 am–12 pm. The email said if the Parent did not want those changes, they would “hold off until his re-evaluation is completed.” She further stated, “The school district doesn’t have any say over ECEAP.” The email explained that if the Parent did not sign the IEP, then “everything stays like it is now.”

20. Information from the ECEAP administrator indicated that at the end of the March 24, 2023 meeting, the plan was for the Student to attend half-day hours from 7:30 am–12 pm, with a special education paraeducator providing proximity support until 11:30 am, starting on March 27, 2023.
21. The District did not provide a PWN or an amended IEP that resulted from the March 24, 2023, IEP meeting.
22. The Parent provided OSPI with a March 29, 2023 email response that she received from the student services administrator, which said she was provided the PWN and “his matrix that reflects his minutes” “at the IEP meeting.”

The Parent did not provide OSPI with a copy of a March 24, 2023 PWN, but did provide OSPI with a copy of a service matrix, which indicated the following amendments to the Student’s service matrix.

SDI in a special education setting:

- Fine Motor: 30 minutes, one time a week (to be provided by an “OTR/COTA” and monitored by OT)
- Speech/language: 30 minutes, two times a week (to be provided by special education staff)

SDI in a general education setting:

- Adaptive: 20 minutes, one time daily (to be provided by special education staff)
- Social/Emotional: 20 minutes, one time daily (to be provided by special education staff)
- Cognitive: 20 minutes, one time daily (to be provided by special education staff)

Regarding minutes of service, the IEP stated:

Total minutes per week student spends in school: 1,290

Totally (sic) minutes per week student is served in special education setting: 1,200 minutes

Percent of time in the general education setting: 93.02%

23. The service matrix the Parent purportedly received at the March 24, 2023 IEP meeting included speech/language services and fine motor services, but it was silent with respect to accommodations, transportation, and support services. Additionally, the service matrix the District provided the Parent, which the Parent provided to OSPI incorrectly stated the amount of time spent in a special education setting, as it should have been 90 minutes per week, not 1,200 minutes per week.
24. The Parent provided OSPI with a copy of an email exchange between the Student’s ECEAP lead teacher to the student services administrator on March 30, 2023, requesting a copy of the Student’s amended IEP and evaluation for the Student’s file. The student services

administrator replied that she could provide it "but they have to be kept in a locked cabinet. He is currently getting reevaluated, which will result in a new IEP." And asked, "Do you want copies of the current ones?" The ECEAP lead teacher replied affirmatively. However, as the District was unable to provide OSPI with the PWN or the amended IEP, there is no evidence that the Student's teacher ever received it.

25. According to the Student's reevaluation, the Student received 30 minutes a week of speech therapy during his school day until March 2023, when he began receiving a total of 60 minutes per week of speech therapy.
26. On April 18, 2023, the Parent provided the District with a recent evaluation from the Student's neurologist.
27. The Parent sent follow up emails to the District on April 10, 19, and 25, 2023, asking about the reevaluation and assistive technology communication device. A reevaluation meeting was set for May 18, 2023.
28. On May 18, 2023, the Student was reevaluated and determined to meet the eligibility criteria for autism as there was "a documented developmental disability, which significantly affects verbal or nonverbal communication as well as social interaction, and adversely affects the student's educational performance." It was recommended that "he continue with [SDI] in cognitive, adaptive, social/ emotional, communication, and fine motor." The Parent was at this meeting and signed the reevaluation document.

Regarding communication, the May 18, 2023 reevaluation stated:

The results of the communication needs assessment as documented indicate the majority of [the Student's] daily functional communication needs cannot be met with natural speech and or low tech communication devices at this time. Therefore, [the Student] requires a speech generating device to achieve and or maintain functional communication ability in activities of daily living. It is essential for [the Student] to have access to a device that provides him with a wide array of vocabulary that he can combine with 'core' words and combination of language strategies. [The Student] communicates in many situations with many partners requiring immediate access to a wide range of vocabulary representing a wide variety of topics and strategies for a successful interaction.

29. The Student's IEP was discussed on May 18, 2023, but the IEP was not finalized or agreed to on that date. An IEP meeting was scheduled for May 25, 2023, but then rescheduled to June 1, 2023, at the Parent's request.
30. Another IEP meeting was held on June 1, 2023. According to the Parent, other members of the IEP team told her that the IEP could not have more than two goals per area. The IEP team did not reach any determinations at the meeting and the meeting was continued to June 7, 2023.
31. On June 2, 2023, the student services administrator sent an email to the IEP team members, including the Parent, and explained that students are not limited to two or any specific number

of goals, but that the goals were developed to best support the Student. Because the goals focus on service areas, they need to be reasonable and achievable in the amount of SDI allotted. Using fine motor skills as an example, she explained that he only receives 30 minutes of services once a week, so working on five goals would not be feasible or achievable, but that when the Student meets his current goals, they can amend or add to goals.

32. According to the Parent, at the June 7, 2023 IEP meeting, she requested that staff be trained on the Student's communication device by the occupational therapist and was told that was "not allowed." The Parent also requested that a diapering plan be included in the Student's IEP, accommodations be added as a list, a notation be made in the adaptive section of the IEP that the Student prefers "crunchy foods", and that the Student be provided one-on-one paraeducator support and special education transportation. The Parent requested that the District document the denials of her requests, including for related services, in writing.

33. On June 7, 2023, the District provided the Parent a PWN, which stated that the District was proposing to change the Student's IEP and an action date was listed as June 12, 2023. The PWN stated that the Parent requested that the Student receive occupational therapy services twice weekly, which was rejected by the team. The PNW noted:

The toileting plan for [the Student] developed by ECEAP is attached to this IEP as parent requested. Parent provided feedback on the IEP drafts which was considered and incorporated. The team did not refuse any of parent's input. [The Parent] requested that her handwritten note be attached to the IEP as well, it is attached. However, she continued to disagree with specific language used in the IEP and therefore did not sign the final IEP.¹

34. The June 7, 2023 IEP covers the period of June 12 to July 1, 2023 and July 2, 2023 through June 11, 2024. The IEP provided 11 accommodations to be provided as needed across all school settings, including one which stated, "Place answer options on AAC device" with the frequency "as needed for academic activities" with the location listed as "all school settings."

The IEP included the following supports for school personnel from June 12, 2023 to June 11, 2024:

- Paraeducator classroom support as needed for SDI in classroom settings
- Toileting Plan as documented in an attached plan across all school settings and the attached plan stated that staff will need to change diaper every two hours

The IEP specified that from June 12 to July 1, 2023, the Student would receive 1,140 minutes of education per week and 90 minutes per week to be served in a special education setting. The Student was to spend 92.11% of time in a general education setting. The IEP called for the following SDI in a special education setting:

- Speech/language: 30 minutes, two times weekly (to be provided by special education staff)

SDI in the following areas was to be provided in a general education setting:

¹ OSPI notes that there is no legal requirement that a parent sign an IEP to agree or consent to the IEP; rather, parents provide consent for the initial provision of special education services but are not required to consent to each annual IEP. Signatures on an IEP primarily denote attendance at an IEP meeting.

- Adaptive: 15 minutes, four times daily (to be provided by special education staff)
- Cognitive: 15 minutes, four times daily (to be provided by special education staff)
- Social/Emotional: 15 minutes, four times daily (to be provided by special education staff)

The IEP also specified a related service in a special education setting:

- Fine Motor: 30 minutes, one time a week (to be provided by an "OTR/COTA" and monitored by OT)

The IEP specified that from July 2, 2023 to June 11, 2024, the Student would receive 1,735 minutes of education per week and 90 minutes per week to be served in a special education setting. The Student was to spend 94.81% of time in a general education setting. The IEP called for the following SDI in a special education setting:

- Speech/language: 30 minutes, two times weekly (to be provided by special education staff)

SDI in the following areas were to be provided in a general education setting:

- Adaptive: 15 minutes, four times daily (to be provided by special education staff)
- Cognitive: 15 minutes, four times daily (to be provided by special education staff)
- Social/Emotional: 15 minutes, four times daily (to be provided by special education staff)

The IEP also specified a related service in a special education setting:

- Fine Motor: 30 minutes, one time a week (to be provided by an "OTR/COTA" and monitored by OT)

The IEP indicated the Student would be transported via special transportation.

The IEP also stated:

For the remainder of the 2022-2023 school year, the Student will continue to be supported by a proximity paraeducator who will continue to deliver all of his SDI. Beginning in the fall for the 2023-2024 school year, [the Student] will attend school for the full school day in the ECEAP setting with a 1:1 paraeducator focused on managing and supporting his needs. The team will meet once each six weeks (with meeting frequency to be increased or reduced as needed) to discuss [the Student's] progress and needs. As [the Student] achieves success and is able to be more independently successful, the team will fade his 1:1 para down to a close-proximity paraeducator as appropriate. The IEP team does not anticipate 1:1 paraeducator support will be reduced based on [the Student's] anticipated progress in the 2023-2024 school year.

35. The Parent expressed concerns via email about the Student's accommodations being listed "as needed" and she felt the paraeducator should be across his day, not "as needed." Further, she asked that the IEP specifically state that the communication device follow him throughout the day. Additionally, she asked for a written explanation as to her request for special education transportation to and from the Student's home to school with a paraeducator would not be granted.
36. On June 8, 2023, the Parent was asked about language on the accommodations page, and she indicated she wanted it to read "across his day," not "daily, as needed." On Friday, June 9, the Parent was informed that there had been changes to the language about the Student's device.

37. According to the Parent, she received a copy of the District's proposed IEP on June 22, 2023, and filed this complaint because of his year of missed services, as well as their failure to include her input in IEP meetings.
38. Regarding the allegation that the District failed to follow proper procedures for providing the Student with a shortened school day, the District admits it did not follow the proper procedures for providing the Student with a shortened school day. The District explained that District officials were unaware that the preschool ECEAP had shortened the Student's day until later in the school year. ECEAP and District staff did not communicate and did not timely set up a meeting to discuss the Student's full-day program minutes. The District acknowledged that the failure to reconvene an IEP meeting to discuss changes to the IEP program or minutes when District officials were made aware of the adjusted schedule was a compliance concern. However, it is the District's position that the Student continued to receive all IEP service minutes/special education services (as outlined in the 2022–23 IEP) through the duration of the 2022–23 school year; it was the Student's general education minutes that were shortened and not in accordance with the IEP.

To address this compliance concern, the District held a meeting between the District superintendent and the ESD's ECEAP director on August 25, 2023. At the meeting, the superintendent and the ECEAP director discussed and developed: communication expectations between the District and the ECEAP staff concerning IEP expectations; expectations for maintaining documentation; and new District IEP notes procedure, including the expectation that notes be kept within student files for record-keeping purposes. Additionally, on August 30, 2023, the superintendent and ECEAP director met with District and ESD program support staff to review the communication and notes expectations and procedures. Staff were also notified that the new procedures were effective the following day, August 31, 2023, which was the first day of school for the 2023–24 school year.

39. The District denied that it failed to follow proper procedures for responding to the Parent's request for compensatory education. The District explained that on March 24, 2023, the special education director explained to the Parent that there is no obligation to provide compensatory time for preschool education minutes, which are not controlled by the District but by the ESD.
40. The District denied that, beginning on January 9, 2023, the District failed to follow proper procedures for responding to the Parent's request that the Student be provided with assistive technology supports. The District asserted that after the January 9, 2023 meeting, the District began collecting and tracking data and the IEP team used that data to determine on March 21, 2023, that a reevaluation for the Student's communication needs was appropriate. The District stated it then conducted a reevaluation, which was completed on May 18, 2023, and the subsequent IEP developed on June 7, 2023, which appropriately addressed the Student's communication needs.

However, to encourage positive communication and support the Parent, the District's new case manager will reach out to the Parent to schedule a meeting at the beginning of the year with the Parent and the Student's multidisciplinary team, including the case manager, speech

services support, and the District's special services director to review the Student's plan for the upcoming year.

41. The District denied that in March 2023, or any other time, the Student's IEP minutes as related to speech were reduced. Rather, the Student's IEP minutes were increased in March 2023 and were not reduced in the Student's June 2023 IEP, and in both instances were based on reliable data and information.
42. The District denied that decisions in June 2023 were based on insufficient or unreliable data. Rather, the June 7, 2023 IEP team decisions were based on information in the full and complete reevaluation completed on May 18, 2023, and the IEP was developed with the Parent's input and participation.

CONCLUSIONS

Issue 1 & 2: Shortened School Day & Compensatory Education – The Parent alleged the District did not follow proper procedures for providing the Student with a shortened school day during the 2022–23 school year. And the Parent alleged that, beginning March 2023, the District did not follow proper procedures for responding to the Parent's request for compensatory education.

Because issues one and two are related, OSPI addresses them together here. First, there is no specific amount of general educational time required for preschool students.² Second, the IDEA requirements state that an IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. OSPI finds that the District specified the amount of special education and related services the Student needed and provided them. The District did acknowledge that the preschool program shortened the general education portion of the Student's day. However, considering both these factors, OSPI concludes that the failure to provide general education preschool minutes that did not involve special education or specially designed instruction does not represent a failure to implement the Student's IEP. Thus, OSPI finds the District's response to the Parent's request for compensatory education reasonable and OSPI finds that compensatory education is not warranted, given that the Student's special education services were implemented.

However, OSPI does find a compliance concern that the District failed to follow proper procedures to timely convene an IEP team meeting in response to the Parent's multiple requests to discuss the Student's program, services, and needs. And the District failed to convene an IEP meeting to discuss the change in the Student's preschool programming when the preschool changed the length of the Student's day. The Parent began requesting an IEP meeting as early as November 2022, and made repeated requests in December 2022, and January and February 2023, for an IEP meeting to discuss the Student's school day and his need for communication services and assistive

² In contrast, state law sets out required yearly instructional hours for kindergarteners, students in first through eighth grade, and students in ninth through twelfth grade. RCW 28A.150.220.

technology. The District was required to convene an IEP team meeting when the Parent requested one to discuss those issues or document its refusal to schedule a meeting in a prior written notice. Evidence indicates that an IEP meeting was held on January 9, 2023, but there is insufficient evidence for OSPI to conclude that the District properly documented that meeting or provided the Parent with prior written notice of decisions made at that meeting. Additionally, due to a lack of communication between the ECEAP program, the ESD, and the District, the IEP team did not reconvene to discuss concerns or adjustments to the Student's plan in a manner that met IDEA procedural requirements until March 21, 2023.

Therefore, OSPI finds the District failed to comply with the IDEA with respect to timely convening an IEP team meeting to consider the Parent's request to reconsider the Student's needs, program length, and IEP. OSPI finds a violation. The District has already taken steps to develop new communication procedures with the preschool program to prevent similar violations in the future. In addition to the corrective actions already taken, the District will be required to provide guidance to staff on issues raised in this complaint.

Issue 3a IEP Development – The Parent alleged that the District did not follow proper IEP development procedures and proper parent participation procedures beginning January 2023, related to the Parent's request that the Student be provided with certain assistive technology supports.

OSPI finds that the Parent requested assistive technology support at the January 9, 2023 meeting for the Student, who is nonverbal. Rather than convening the IEP team to consider the Parent's request and whether further evaluation was needed, the District began collecting data regarding the Student's communication. This data was considered by the Student's IEP team when a meeting was convened 2.5 months later, on March 21, 2023. The IEP team decided at that time that a reevaluation was appropriate. The Parent signed a consent for reevaluation on March 24, 2023. And the May 18, 2023 reevaluation's communication needs assessment documented that the majority of the Student's daily functional communication needs could not be met with natural speech and or low-tech communication devices at this time.

OSPI finds that because an IEP team meeting was not timely convened to consider this issue between January 9 and March 21, 2023, the District failed to timely follow procedures regarding the Parent's request. OSPI notes that 2.5 months of data collection and another month and a half to evaluate a nonverbal Student's communication needs seems like an unreasonably long amount of time to address the Parent's request for assistive technology communication supports. To address this issue, OSPI will require that the District provide guidance to staff about the requirements for responding to parental requests for IEP team meetings. Given the delay in identifying the need for and providing the communication device, the District will also be required to provide the Student five hours of compensatory education services in speech/communication and instruction on using the communication device.

Issue 3b IEP Development – The Parent alleged that the District did not follow proper IEP development procedures and proper parent participation procedures to the extent a decision was made in March 2023 to reduce the Student's IEP minutes and/or eliminate speech, and the

decisions were not based on sufficient, relevant data on the Student's needs resulting from the Student's disability.

The Student's IEP team, including the Parent, met on March 21, 2023, and proposed an amended IEP. The Parent did not agree to the proposed draft IEP, as it reduced the Student's IEP minutes and did not include speech services, nor any accommodations or related services. It is not clear the March 21, 2023 was finalized or implemented, rather than just proposed.

The IEP team then met again on March 24, 2023. At that time, the IEP team revised the Student's service matrix for SDI in a special education setting to include (1) fine motor for 30 minutes, one time a week, and (2) Speech/language: 30 minutes, two times a week, which was an increase from 30 minutes once a week.

The District did not provide OSPI with a PWN or an amended IEP that resulted from the March 24, 2023 IEP meeting. Based on the evidence provided by the Parent, it appears that the Parent did not receive a copy of the full amended IEP, but only a copy of a service matrix, which indicated the SDI amendments discussed above. The service matrix also included SDI in the following: adaptive, social/emotional, and cognitive SDI in a general education setting for 20 minutes, one time daily in each of those three areas. The service matrix the Parent received at the March 24, 2023 IEP meeting included speech/language services and fine motor services, but it was silent with respect to accommodations, transportation, and support services. Additionally, the service matrix did not clearly articulate the length of the Student's school day and the service matrix the District provided the Parent incorrectly stated the amount of time the Student would spend in a special education setting, as it should have been 90 minutes per week, not 1,200 minutes per week.

Based on this, OSPI makes several conclusions: OSPI finds that those decisions were based on sufficient, relevant data related to the Student's needs and disability; the data the District had been collecting since mid-January 2023. OSPI also finds that the Student's Parent participated in both IEP team meetings. However, the District did not follow proper procedures regarding the amended IEP developed at that time, because there is no evidence that the District provided the Parent with a clear amended IEP or a PWN to document the changes in the Student's IEP. It is clear that the Parent was confused with respect to the difference between the proposed IEP on March 21 and the amended IEP on March 24, 2023, and given she only received a service matrix, it was not clear the Parent was informed of the full scope of the amended IEP. There is also insufficient evidence for OSPI to conclude that the Student's teacher received an amended IEP. Thus, OSPI finds a violation. To address this issue, OSPI will require that the District provide guidance to staff.

Issue 3c IEP Development – The Parent alleged that the District did not follow proper IEP development procedures and proper parent participation procedures with the June 2023 IEP regarding support for transitions between different physical environments; the setting for speech

services; a toileting plan; the need for specialized transportation; use of a communication-assistance device; paraeducator support, and applied behavioral analysis (ABA) therapy.³

OSPI finds that IEP team decisions were based on information in the full and complete reevaluation completed on May 18, 2023. Parental disagreement with certain provisions or wording of the IEP is not, by itself, sufficient to establish that Parental input was not considered. Here, the Parent and the Parent's advocate participated in all the IEP meetings that resulted in the Student's June 7, 2023 IEP. OSPI finds that the IEP team's decisions in the following areas outlined above are based on sufficient, relevant data on the Student's needs resulting from the recently completed evaluation, as well as information provided by the Student's medical provider. Further, the resulting IEP specifically included: accommodations through the Student's school day; speech/language in a special education setting for 30 minutes, two times weekly to be provided by special education staff; a toileting plan attached to the IEP; special education transportation; and paraeducator support, including specifics about that support. Further, the Parent was provided a PWN about the June 7, 2023 IEP and its implementation.

Considering all the above, OSPI does not find the District failed to comply with IDEA requirements and procedures for proper IEP development and parent participation procedures with respect to the June 7, 2023 IEP. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **September 22, 2023, October 20, 2023, and February 23, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 22, 2023**, the District and Parent will develop a schedule for five hours of compensatory education in speech/communication, including instruction using the communication device.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The District will provide OSPI with documentation of the schedule for services by or before **September 22, 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

³ While mentioned in the Parent's original complaint, OSPI did not find evidence that the Parent requested ABA therapy services during IEP meetings or that a potential need for ABA was ever identified or discussed in any of the IEP meetings. Thus, OSPI does not find a violation to consider ABA therapy needs.

provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **February 16, 2024**.

By or before **February 23, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

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 **February 23, 2024**.

DISTRICT SPECIFIC:

Written Guidance

The District, in cooperation and collaboration with the ESD's ECEAP programs, will develop written guidance regarding preschool students that are eligible for special education services on the topics outlined below.

By **September 22, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 29, 2023.

By **October 13, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, special education certificated staff (teachers), school psychologists, ECEAP teachers, etc., in the ECEAP program and District school that the Student was enrolled in during the 2022–23 school year. The guidance will include examples and a discussion of best practices.

- Upon a parent's request for an IEP meeting, notifying the District and convene an IEP team or provide the Parent with PWN as to why the parents' request has been rejected.
- Notifying the District's special education department about any potential special education student schedule or program changes, and best practices for determining if an IEP meeting is needed.
- Properly document IEP meeting decisions by sending parents copies of PWN and place PWN documentation in student files.
- Obligation to provide parents copies of the IEP.

By **October 20, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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.

RECOMMENDATIONS

The District indicated that it will have the Student's case manager reach out to the Parent to schedule a meeting to review the Student's current IEP with the Parent and the Student's team at the beginning of the year. The Parent has indicated to OSPI that the District should consider ABA services and the assistance of a paraeducator to accompany the Student during transportation via special education. Therefore, OSPI recommends that the District convene the Student's IEP team to review the Student's current IEP and consider these requests.

Because the Parent mentioned in a response to information provided by the District that while she is bilingual, her primary language is Spanish. The Parent also mentioned that the District did not provide an interpreter when the Student's other parent, who does not speak English, attended an IEP team meeting. OSPI recommends that the District provide guidance to staff about its obligation to provide interpretation and translation services to ensure parent participation in IEP meetings, as well as how to request interpreter and translation services.

Dated this 5th day of September, 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.)