

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-32

PROCEDURAL HISTORY

On March 8, 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 West Valley 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 March 9, 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 March 27, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on March 28, 2023. OSPI invited the Parent to reply.

On March 29, 2023, OSPI received the District's additional response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On April 10, 2023, OSPI requested additional information from the District. On April 17, 2023, OSPI received the additional information from the District and forwarded it to the Parent on April 18, 2023.

On April 19, 2023, OSPI received the Parent's reply to the District's response and forwarded it to the District on April 20, 2023.

On April 19, 2023, OSPI requested additional information from the Parent and received it the same day. OSPI forwarded the information to the District on April 20, 2023.

On April 20, 2023, OSPI interviewed the Student's IEP case manager.

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 March 9, 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. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, including related services, since March 9, 2022
2. Per WAC 392-172A-03090, has the District provided the Parent progress reports in a timely manner since March 9, 2022
3. Per WAC 392-172A-02020, did the District properly evaluate whether the Student needed to participate in the extended school year (ESY) program during the summer of 2022?
4. Per WAC 392-172A-03110, did the District provide the grounds to reduce or eliminate services from the Student's latest proposed IEP from February 2023?
5. Per WAC 392-172A-03095, were all required members of the IEP team at the February 2023 IEP meeting and/or were proper excusal procedures followed with respect to the general education teacher?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred,

the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

IEP Team Decisions. The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

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

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of

evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Scope of Community Complaints: Through the community complaint process, OSPI can investigate allegations that an educational service district, school district, or a subgrantee is violating or has violated Part B of the IDEA or regulations implementing the act. The alleged violation must have occurred within one year of the date the complaint was filed. 34 CFR §300.153; WAC 392-172A-05025.

FINDINGS OF FACT

Background: 2021-2022 School Year

1. On August 31, 2021, the District held its first day of instruction. The Student was enrolled as a sixth grader in a District middle school.
2. The Student's annual IEP from February 2, 2022 provided the Student the following specially designed instruction (SDI) in a special education setting primarily provided by a special education teacher:
 - Basic Reading Skills: 71 minutes/weekly.
 - Reading Comprehension: 72 minutes/weekly.
 - Reading Fluency: 72 minutes/weekly.
 - Written Expression: 72 minutes/weekly.
 - Math Calculation: 144 minutes/weekly.
 - Math Problem Solving: 143 minutes/weekly.
 - Speech/Language: 92 minutes/monthly (provided by speech language pathologist (SLP)).

The Student's percent of time in a general setting was 68% and LRE placement in general education classes was 40-79%. The Student received zero minutes per week of SDI in the general education setting and spent 597 minutes of SDI outside the general education classroom in a special education setting. The IEP stated that the Student was not eligible for ESY services.

The PWN stated:

Due to the significance of his delays, the IEP team agreed that the general education curriculum cannot be modified to the extend (sic) that [Student] would benefit. [Student] will continue to receive Special Education Services in the Resource Room in the areas of Basic Reading, Reading Comprehension, Reading Fluency, Written Expression, Math Calculation, Math Problem Solving. In addition, he still qualifies for speech and language.

3. On February 16, 2022, the Parent emailed the District as follows: "I'm wanting to see about getting [the Student] into the Innovation Center (IC) next school year since he'll be going into the 7th grade...I think he would do fantastic in the IT and Computer Science program."

4. According to the District's website, in the IC:
Students choose a program to focus on that aligns with their personal and career interests.

Every morning, all year long, a cohort of program students and an industry expert designer (teacher) learn through lessons and projects with embedded standards from industry and core subject areas.

Each day, students have time set aside for independent study, assessments, online learning, ...State University coursework, club meetings, meetings with a career counselor, collaborative work and fun with classmates, and more.

In the afternoon, students follow a trimester rotation schedule so they can explore interests, examine interconnections, and complete other standards in the other program areas.

5. On March 9, 2022, the timeline for the present complaint investigation began.
6. From March 2022 through June 2022, according to the Student's schedule, the Student had a special education class in math and another in language arts on a daily basis.
7. From March 2022 through June 2022, the Student had twelve speech sessions scheduled. For two of those sessions, the SLP was absent and for one session the Student was absent.
8. The Student's February 2022 IEP included the following goals and the District provided information on the Student's progress on goals between June 2022 and January 2023.

The basic reading goal from the Student's February 2, 2022 IEP stated:

By 2/1/2023, Student will increase his basic reading skills from reading multisyllabic words from 82% accuracy to reading them with 95% accuracy as measured by district and/or classroom-based measures (Baseline: 82% Accuracy; Target: 95% Accuracy).

Goal Progress Updates

06/17/2022: Skill Emerging - Anticipate Will Meet Goal. Student has made improvements with word prefixes. He needs to keep working with words by using or saying them with correct suffixes. Have a great summer!
Progress Score: 42%

11/17/2022: Sufficient Progress, Working on suffixes. Progress Score: 50%

01/20/2023: Sufficient Progress. 16/20 correct on multisyllabic assessment. Progress Score: 80%

The reading comprehension goal from the Student's February 2, 2022 IEP stated:

By 02/01/2023, Student will increase his ability to answer comprehension questions from a 75% accuracy on a 3rd-grade passage to 80% accuracy on a 4th-grade passage, as measured by district and/or classroom-based measures (Baseline: 75 % Accuracy; Target: 80% Accuracy).

Goal Progress Updates

06/17/2022: Anticipate Will Meet Goal [Student] is showing great growth with his comprehension skills. He is still working on his consistency with

- understanding inferential questions at this time on a 3rd-grade passage.
Progress Score: 70%
- 11/15/2022: Sufficient Progress [Student] is showing growth in comprehension skills, but needs extra time for processing. Progress Score: 74%
- 01/24/2023: Sufficient Progress Reading comp progress is good for [Student], with his practice in various settings at the IC. Progress Score: 76%

The reading fluency goal from the Student's February 2, 2022 IEP stated:

By 02/01/2023, Student will increase his fluency from reading a 3rd-grade passage with 93% accuracy to a 4th-grade passage with 98% accuracy as measured by district and/or classroom-based measures. (Baseline: 93 % Accuracy) (Target: 98 % Accuracy)

Goal Progress Updates

- 06/17/2022: Sufficient Progress - Anticipate Will Meet Goal [Student] currently read 86 correct words per minute with no mistakes. That is awesome growth at a 4th-grade reading level. Progress Score: 86
- 11/16/2022: Skill Emerging [Student] is currently reading 84 correct words per minute (cwpm) at a GLE 4 Level. Progress Score: 84
- 01/24/2023: Skill Emerging [Student] shows progress with his practice reading aloud. He benefits from more time to look over the selection before reading to teacher. Progress Score: 87 cwpm

The written expression goal from the Student's February 2, 2022 IEP stated:

By 2/1/23, [Student] will increase his ability to independently write 5 grammatically correct sentences including a topic sentence, 3 detailed sentences, and a conclusion from 45% accuracy to 75% accuracy as measured by classroom-based assessments. (Baseline: 45 % Accuracy) (Target: 75 % Accuracy)

Goal Progress Updates

- 06/17/2022: Sufficient Progress - Anticipate Will Meet Goal With the use of Speech-to-Text, [Student] has been able to present 3 or 4 nicely written sentences for each assessment. On his last written assessment, he is still working on the 5 sentences that also includes a conclusion to his paragraph. Progress Score: 60%
- 11/15/2022: Skill Emerging [Student] has been working on several writing assignments in his various courses at IC. Speech-to-text is helpful when he uses it. Progress Score: 3-4 sentences
- 01/24/2023: Skill Emerging [Student] is working on a multi paragraph assignment in his History class, which is a big challenge. When using text-to speech, his sentences are better quality. He needs extra time to complete these complex assignments. Progress Score: 3-4 sentences

The math calculation goal from the Student's February 2, 2022 IEP stated:

By 2/1/2023, [Student] will increase his ability to solve multi-digit multiplication and division equations from 10% accuracy to 70% accuracy as measured by classroom based assessments. (Baseline: 10 % Accuracy) (Target: 70 % Accuracy)

Goal Progress Updates

- 06/17/2022: Skill Emerging - Anticipate Will Meet Goal [Student] is doing a wonderful job making progress towards his goal. Keep up the great work! Progress Score: 30%

- 11/17/2022: Skill Emerging [Student] is working on multi digit multiplication and division problems as relates to his program at the IC. Progress Score: 30%
- 01/24/2023: Sufficient Progress With increased practice, [Student] is making progress with multiplication of multi digit numbers; he is also making progress with multi digit division problems. Progress Score: 37%

The math problem solving goal from the Student's February 2, 2022 IEP stated:

By 2/1/2023, [Student] will increase his ability to solve single step multiplication and division word problems with multi-digit numbers from 10% accuracy to 70% as measured by classroom based assessments. (Baseline: 10 % Accuracy) (Target: 70 % Accuracy)

Goal Progress Updates

- 06/17/2022: Skill Emerging - Anticipate Will Meet Goal [Student] has done a wonderful job making progress towards meeting his goal. Progress Score: 30%
- 11/15/2022: Skill Emerging [Student] is making progress on his single step multiplication problems, and is trying out some multi step problems. Progress Score: 35%
- 01/24/2023 Skill Emerging Continued practice and peer support are helpful in supporting [Student's] progress towards mastering single step multiplication problems of multi-digit numbers. Progress Score: 39%

2022-2023 School Year

9. On August 24, 2022, the District held its first day of instruction. The Student was enrolled as a seventh grader in a District middle school. The Student's February 2, 2022 IEP was in effect.
10. The Student was enrolled in the District's IC. From September 2022 through March 2023, six classes are listed on the Student's daily schedule with several different teachers. Teacher 1 is the instructor for "IT Core A, IT Core B, IT Core C," and "Advisory"; teacher 2 is the instructor for "Entrepreneurship"; and teacher 3 is the instructor for "Robotics." Teacher 1 is a general education instructor in "Computer Science." Teacher 2 is a general education instructor in "Entrepreneurship." Teacher 3 is a general education instructor in "Robotics."
11. From September 9, 2022 through March 3, 2023 (last day of speech prior to this complaint being filed) there were twenty-five speech sessions scheduled for thirty-minutes each session. For six sessions, the Student was absent and once the SLP or her assistant was not available.
12. On February 8, 2023, the Student's IEP team met to discuss the Student's annual IEP. The February 2023 IEP provided the Student the following SDI, primarily provided by a general education teacher in the general education setting:
 - Reading: 60 minutes/weekly.
 - Written Expression: 60 minutes/weekly.
 - Math Calculation: 60 minutes/weekly.
 - Math Problem Solving: 60 minutes/weekly.
 - Speech/Language: 90 minutes/monthly (provided by an SLP, in a special education setting).

The Student's percent of time in a general setting was 99% and the LRE placement in general education classes was 80-100%. The Student was to receive 240 minutes per week of SDI inside the general education classroom, and 23 minutes of SDI the general education classroom.

Teacher 1, a general education teacher, was present at the IEP meeting.

The PWN provided that the Student's IEP would be initiated on February 11, 2023, but the PWN does not provide any additional information as to what issues the parties discussed and the parties' positions on those issues.

13. On March 8, 2023, the Parent filed special education community complaint (SECC) 23-32 with OSPI. The Parent's complaint alleged in part that the District failed to provide:
- The Student's SDI from March 9, 2022 through February 17, 2023.
 - Progress reports during the 2022-2023 school year.
 - Grounds to reduce or eliminate services from the Student's latest proposed IEP from February 2023.
 - Extended school year (ESY) services during the summer of 2022.
 - At the February 8, 2023 IEP meeting, the attendance of teacher 2, one of the Student's important general education teachers.

The Parent requested the following remedies:

- Provide 597 weekly minutes of SDI delivered by a special education teacher in general education settings as called for in the Student's February 4, 2022 IEP.
- Compensatory education for the minutes the District has failed to provide from March 9, 2022 to the present.
- Sound Options Group to run the next IEP meeting instead of the District's personnel.
- A new IEP based on the Student's last evaluation.
- An independent educational evaluation (IEE) in occupational therapy (OT) to properly determine the Student's OT supports.
- Compensatory OT services.

In the March 8, 2023 complaint, the Parent also stated in part: "In February 2022, the District removed OT services...without reevaluating and without data showing OT was no longer required to support IEP goals."

14. On March 27, 2023, the District submitted its response. Regarding the case's first issue, the District responded in part:

[T]he Student's IEP was properly implemented...[f]rom at least March 9, 2022, until the end of the 2021-2022 school year ...All of the Student's specially designed instruction was delivered in the resource room...The District also properly implemented the Student's related services...which included speech-language therapy ...During the 2021-2022 school year, the Student made consistent progress toward his IEP goals, as reflected in the Student's progress reports.

For the 2022-2023 school year,...the District acknowledges that it did not provide the Student with specially designed instruction ("SDI") in the areas of Basic Reading Skills,

Reading Comprehension, Reading Fluency, Written Expression, Math Calculation, and Math Problem Solving. However, the District provided the Student with 92 monthly minutes of speech-language services, which allowed the Student to meet his speech-language goals under the current IEP.

...

As a corrective action for this violation, the District proposes to provide the Student with 4,975 minutes of compensatory education in the areas of Basic Reading Skills (615 minutes), Reading Comprehension (624 minutes), Reading Fluency (624 minutes), Written Expression (624 minutes), Math Calculation (1,248 minutes), and Math Problem Solving (1,240 minutes).

Regarding the second issue, the District responded in part:

During the 2021-2022 school year, the District provided the Parent with periodic progress reports...At the beginning of the 2022-2023 school year, the Student changed schools, and the District has since learned that progress reports were not timely sent to the Parent

When the District learned that progress reports were not sent to the Parent, it took steps to remedy the problem by providing training, reviewing legal requirements, and reviewing District policies and procedures to staff responsible for progress reporting. The District is also taking steps to ensure that the Parent is provided with accurate progress reports that capture the Student's progress during the 2022-2023 school year.

Regarding the third issue, the District responded in part:

At the IEP meeting held on February 2, 2022, the IEP team discussed whether the Student was eligible for ESY services and determined that the Student was not eligible for ESY services during the summer of 2022...The Student's mother attended this IEP meeting, participated in the IEP discussion, and signed the IEP that included the ESY decision.

Regarding the fourth issue, the District responded in part:

The District does not view the proposed service matrix in the draft IEP...discussed at an IEP meeting on February 8, 2023, as reducing the Student's services. When the Student began at the Innovation Center (the "IC") at the beginning of the 2022-2023 school year, his class schedule changed from a traditional six-period daily schedule to a block schedule with extended class periods...The service matrix in the Draft IEP allows the Student to remain in the general education class while receiving SDI as a push-in rather than a pull-out service.

Further, the District has not proposed and implemented the February 8, 2023, IEP. Since February 8, 2023, the District has made repeated efforts to meet with the Parent to explain the class schedule change and discuss her concerns. The District's efforts have been unsuccessful due to the Parent's rescheduling and decision not to meet until the outcome of this Complaint.

Regarding the fifth issue, the District responded in part:

The District does not believe an excusal form was necessary to excuse general education teacher [2] from the IEP meeting on February 8, 2023, as the Student's other general education teacher, [teacher 1], attended the meeting...had the District known in advance that the Parent valued [teacher 2's] attendance at the meeting, the District would have offered to reschedule the IEP meeting to another time when he could attend.

15. On April 17, 2023, the District sent OSPI an email that provided additional information about the corrective action the District took regarding the progress reports. That email stated in part that either the director of special education or the special education coordinator met with all District staff who write IEPs on either February 28, March 7, March 21, or March 22, 2023. At these meetings, the administrators "explained the legal requirements related to Progress Reports, shared new expectations that all Progress Reports be emailed home or mail home via certified mail, and clarified the Embrace platform is our only platform for Progress Reports."
16. On April 11, 2023, the Student's IEP team met. In a later, April 17, 2023, email to OSPI, the District shared information about the IEP team's discussion of the Student's progress.
17. Also, on April 17, 2023, the District sent OSPI an email that provided the basis for the District's decision to reduce the Student's services. That email provided in part:

The District believes the progress the Student is making is due to the new setting and focus at the school the Student is now enrolled. The [IC] is standards based and utilizes block scheduling. This Student spends his mornings (essentially three traditional periods) in a Computer Science class with Reading, Writing, and Math woven into the instruction for the class. Computer Science is an area of interest for the student, so he is more interested in the instruction. He has one class in the middle of the day, then another block schedule (essentially three traditional periods) in the afternoon in another track at the school which rotates on a trimester schedule. The block classes allow for the Student to spend more time with his teachers. His Computer Science Teacher is able to really learn his needs and meet them. Also, the District has focused on Universal Design for Learning, Inclusive Practices, Culturally Responsive Instruction, and Standards Based Instruction/Assessment, which have led to greater success for the Student. We admit we have not provided SDI as stated in the IEP. Despite the lack of SDI the data from iReady and classroom assessments shows the student is making progress.

READING

At an IEP meeting on April 11, the Student's Computer Science Teacher and Entrepreneurship Teacher both shared that while the Present Levels for Reading has been around 4th grade level, they have not witnessed the Student needing support for reading the 7th grade material. They offer accommodations, and the Student refuses the accommodations and have been successful without the accommodations. On his most recent iReady Diagnostic Assessment (2/6/23), the Student tested at a 3rd Grade level with an overall score of 537. This is an improvement over his previous score on 10/5/22 which was at 519. The Student has made 106% of annual typical growth in four months. Typical Growth is the average annual growth for a student at this grade and placement level on their baseline Diagnostic. The student tested out of Phonological Awareness, Phonics, and High-Frequency Words. He tested at a 3rd Grade level in the area of Vocabulary and Comprehension: Literature. He improved from Grade 3 to Grade 4 in Comprehension: Informational Text. Through his Computer Science and other classes at the [IC], the Student has met the standard for one...of six areas of ELC Language. He is progressing in the other five areas. He has met standard for one...of four EL Reading: Informational Text standards. He has met all four standards for ELA Writing Production/Distribution/Research/Range and both standards for Speaking and Listening.

WRITING

Through his Computer Science and other classes at the [IC], the Student has met all the standards for ELA Writing and ELA Writing Production/Distribution/Research/Range.

MATH

On his most iReady Math Diagnostic Assessment (2/9/2023), the Student scored a 459 (Grade 4) which was an improvement from 442 (Grade 3) on 10/6/2022. He has made 131% progress toward Annual Typical Growth in four months. Typical Growth is the average annual growth for a student at this grade and placement level on their baseline Diagnostic. He improved from Grade 3 to Grade 4 in the Geometry domain and from Grade 3 to Grade 5 in the Number and Operations domain.

18. On April 19, 2023, Parent stated in an email that she had never received a progress report for the 2022-2023 school year prior to seeing the progress reports in the District's response that was emailed to her on March 28, 2023.
19. On April 20, 2023, OSPI interviewed the Student's case manager. The case manager stated that she had forgotten to send out the Student's progress reports.

CONCLUSIONS

Issue One: IEP Implementation – The Parent's complaint alleged in part that the District failed to provide Student's SDI from March 9, 2022 through February 17, 2023.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 matter, based on the Student's February 2, 2022 IEP, the Student was entitled to 597 minutes of special education weekly in the special education setting. From March 9, 2022, until the end of 2021-2022 school year, the Student had a special education class in math and another in language arts daily and was receiving his speech services. Thus, from March 9, 2022, through the end of the 2021-2022 school year, the Student's SDI minutes were provided.

For the 2023-2023 school year, the Student was enrolled in the IC, and based on the Student's schedule in the IC, the Student's SDI minutes from the Student's February 2, 2022 IEP were not being satisfied with the exception of the Student's SDI minutes for speech. The District acknowledge this in their response, admitting that the Student was not provided SDI as outlined in his IEP. Based on the District's response and records, OSPI finds that the District materially failed

to implement the Student's February 2022 IEP for the 2022-2023 school year, and thus, OSPI finds a violation.

As a corrective action, the District has proposed, and OSPI accepts as an appropriate remedy, 4,975 minutes of compensatory education.

Issue Two: Progress Reports – The Parent's complaint alleged in part that the District failed to provide progress reports during the 2022-2023 school year.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. Progress reports must be provided in the manner and frequency outlined in the IEP.

The District did appear to be monitoring the Student's progress and creating progress reports; however, those reports were not sent to the Parent. The District acknowledged in their response that it had not provided the Parent progress reports in a timely manner for the 2022-2023 school year. Based on the District's acknowledgment, OSPI finds a violation.

In an April 17, 2023 email to OSPI, the District explained the corrective actions it has taken to ensure progress reports are sent out in a timely manner in the future—including training with staff. OSPI accepts the District's actions as an appropriate remedy for the District level violation. OSPI will also require the District to provide OSPI documentation that the District has sent the Parent progress reports for the remainder of the 2022-2023 school year.

Issue Three: Extended School Year (ESY) – The Parent's complaint alleged the District failed to provide ESY services during the summer of 2022.

Through the community complaint process, OSPI can investigate allegations that an educational service district, school district, or a subgrantee is violating or has violated Part B of the IDEA or regulations implementing the act. The alleged violation must have occurred within one year of the date the complaint was filed. The investigation timeline for this complaint began on March 9, 2022.

At the time this complaint was opened, it appeared that there may have been a potential IDEA violation concerning the decision not to provide the Student ESY during the summer of 2022. Upon receiving all the relevant documentation from the District on this matter, the ESY decision occurred at the February 2, 2022 IEP meeting, which is more than one year prior to the present case being initiated. As such, the Parent's allegation regarding ESY is outside the scope of the instant complaint and OSPI, as such, makes no conclusion on the issue.

Additionally, for the reasons just provided, Parent's allegations regarding the Student's occupational therapy services are outside of the scope of this complaint investigation because

that decision was also made at the February 2, 2022 IEP meeting, more than a year prior to the complaint being filed.

Regarding the present issue, if the Parent chooses, she may file a request for a due process hearing. In such a proceeding, the administrative law judge can consider allegations that have occurred over the past two years.

Issue Four: Elimination of Services – The Parent alleged that the District has failed to provide grounds to reduce or eliminate services from the Student’s latest proposed IEP in February 2023. The District’s position on this issue is that it does not view the proposed service matrix in the draft IEP discussed at an IEP meeting on February 8, 2023 as reducing the Student’s services and the District maintains that the Student is making progress in his current placement, despite the District’s admission that SDI was not provided per the IEP.

A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters.

Despite the District’s arguments, the reality is that the Student’s February 2022 IEP contained 597 minutes per week of SDI and related services, and the Student’s February 2023 IEP proposal only contains 263 minutes of SDI and related services per week, or less than half the SDI and related services that were provided to the Student in the previous IEP. Further, the February 2023 IEP potentially represents a significant change in placement as the February 2022 IEP provided all of the Student’s services in a special education setting and the February 2023 IEP proposes the majority of the services in a general education setting.

As stated above, the District’s PWN from February 8, 2023, does not provide any information as to what issues the parties discussed and whether the Parent or other IEP team members agreed or disagreed with the changes. It is apparent that the District wants to implement a significantly different IEP than the one that was put into place in February 2022, but in a PWN, the District has not referred to any data, evaluation, or other reasons why it believes the Student’s SDI minutes should be cut in half. The District’s lengthy email from April 17, 2023, which discusses the reasons why the District is considering reducing the Student’s SDI services and refers to data, is not the appropriate document to provide the reasons for the reduction in services. Importantly, one of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made.¹ As such, OSPI finds a violation regarding the fourth

¹ In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student’s educational program. In making this determination, the following factors must be considered: whether the educational program in the student’s IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and whether the new placement

issue as the IEP team did not consider whether a reevaluation was needed prior to changing the Student's placement. The District will be required to hold an IEP meeting to discuss the proposed IEP and determine if a reevaluation is needed to support the development of the Student's IEP, and OSPI notes that the information the District provided about the Student's progress is key information for the IEP team to discuss.

Issue Five: IEP Meeting Participants – The Parent's complaint alleged in part that the District failed to ensure teacher 2 attended the February 8, 2023 IEP. In its response the District expressed: "The District does not believe an excusal form was necessary to excuse general education teacher [2] from the IEP meeting on February 8, 2023, as the Student's other general education teacher, [teacher 1], attended the meeting."

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student; not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

Based on the applicable WAC regulations, the District is not required to have each and every one of Student's general education teachers at an IEP meeting. Teacher 1, who is the Student's teacher in four out of six of his daily classes was present at the February 8, 2023 meeting. Thus, the District satisfied its responsibilities regarding the participants the District needed to have present at the February 8, 2023 meeting. For this reason, there is no violation regarding this issue. As stated in the District's response, if Parent would like a particular individual at future meetings, the Parent is encouraged to inform the District ahead of time.

As a final note, the Parent has requested Sound Options Group to mediate the next IEP meeting instead of the District's personnel. Under the SECC process, OSPI does not have the authority to require a party to participate in mediation; each party must voluntarily agree to that process. However, OSPI encourages the District and Parent to consider this option if it would be helpful to further collaboration.

CORRECTIVE ACTIONS

By or before **May 31, 2023, June 9, 2023, and September 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

option is the same option on the continuum of alternative placements. Letter to Fisher, 21 IDELR 992 (OSEP, July 6, 1994).

STUDENT SPECIFIC:

IEP Meeting

By or before **May 22, 2023**, the District will convene the Student's IEP team to discuss the Student's progress, placement, whether a reevaluation is needed, and to finalize the IEP.

By or before **May 31, 2023**, the District will provide OSPI a copy of the IEP and the PWN from the IEP meeting that explains why the District has adopted the IEP.

Compensatory Education

By or before **May 22, 2023**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Basic Reading Skills (615 minutes),
- Reading Comprehension (624 minutes),
- Reading Fluency (624 minutes),
- Written Expression (624 minutes),
- Math Calculation (1,248 minutes), and
- Math Problem Solving (1,240 minutes).

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The 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 **May 31, 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.

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 **September 15, 2023**.

By or before **August 31, 2023**, the compensatory education must be completed.

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

Progress Reports

By **June 9, 2023**, the District will provide OSPI documentation showing that the remaining progress reports for the 2022-2023 school year were provided to the parent.

DISTRICT SPECIFIC:

None.

Dated this 28th day of April, 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.)