

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-111

PROCEDURAL HISTORY

On November 16, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending Tacoma 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 November 16, 2018, 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 December 10, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on December 11, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 21, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On December 21, 2018, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received this information from the District on December 31, 2018 and forwarded it to the Parent that same day.

On January 3, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received this information from the District on January 8, 2019 and forwarded it to the Parent on January 9, 2019.

On January 3, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent. OSPI received this information from the District on January 9, 2019 and forwarded it to the District that same day.

On January 9, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent. OSPI received this information from the District on January 9, 2019 and forwarded it to the District on January 10, 2019.

On January 9, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received this information from the District on January 10, 2019 and forwarded it to the District that same day.

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

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on November 17, 2017. 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 time period.

ISSUES

1. Did the District implement the Student's individualized education program (IEP) in place during the 2018-2019 school year, including providing the special education and related services, as well as accommodations?
2. Did the District follow procedures for determining the Student's placement during the 2018-2019 school year?
3. Did the District follow procedures for amending or revising the Student's IEP so that it reflected the services to be provided to the Student to ensure a free appropriate public education (FAPE)?
4. Did the District provide transportation in accordance with the Student's IEP and the requirements of WAC 392-172A-02095(5)? If not, is the Parent entitled to reimbursement for providing transportation?
5. Did the District deny the Student access to a free appropriate public education (FAPE) by inconsistently providing the Student with transportation from October 18, 2018 until the present?

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 who is eligible to receive special education services. A school district must 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no

requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994); see also *In re: Mabton School District*, 2018-SE-0036 (“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”).

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

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). Placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school. 72 Fed. Reg. 46540, 46687 (August 14, 2006).

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." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Transportation – Time on Bus: Whenever reasonably possible, no student should be required to ride more than sixty minutes one way. WAC 392-172A-02095(5).

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress", the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, " and the student

should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is “reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can ‘make progress in the general education curriculum,’ commensurate with his non-disabled peers, taking into account the child’s potential.” *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9th Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105. *Andrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA’s substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

FINDINGS OF FACT

Background Information

1. Prior to September 2016, the Student was enrolled in an out-of-state school district. At some point during the Student’s enrollment at the out-of-state school district, that district found the Student eligible for special education, and it provided the Student with special education and related services in accordance with an individualized education program (IEP).¹

2016-2017 School Year

2. The Student transferred into the District in September of 2016. At that time, the Student was in the first grade.
3. The District completed a reevaluation of the Student on November 11, 2016. The Student’s reevaluation group determined that the Student continued to be eligible for special education under the autism category. The November 2016 reevaluation report recommended that the Student receive specially designed instruction in the area of social emotional/behavior and supplementary aids and services in occupational therapy and speech language pathology.

Subsequently, the Student’s IEP team created an IEP for the Student.

¹ According to the District’s November 2016 reevaluation report, the Student had been receiving “special ed[ucation] services” since at least kindergarten.

2017-2018 School Year

4. During the 2017-2018 school year, the Student attended a District elementary school (elementary school 1) and was in the second grade.
5. On November 9, 2017, the District completed a functional behavioral assessment (FBA) of the Student. The Student's reevaluation group determined that the Student would benefit from a behavioral intervention plan (BIP).
6. On December 7, 2017, the Student's IEP team created a new annual IEP for the Student. The December 2017 IEP included annual goals in the area of social emotional/behavioral. The December 2017 IEP provided the Student with the following specially designed instruction in a *general education setting*:
 - Social emotional/behavioral—120 minutes five times a week (to be provided by a special education teacher)

The IEP also provided the Student with the following specially designed instruction in a *special education setting*:

- Social emotional/behavioral—30 minutes two times a week (to be provided by a special education teacher)

And the December 2017 IEP provided the Student with the following related services in a *special education setting*:

- Home district transportation²—45 minutes two times daily (to be provided by home transportation services)

The December 2017 IEP provided the Student with the following accommodations:

Accommodation	Frequency	Location
Access to sensory objects and activities	As the teacher sees the need	General education and special education
Breaks available when frustration level accelerates	When [Student] or the teacher sees the need	Special education
Give tests in small group setting or 1:1	As the teacher sees the need throughout the testing window	Special education
Multiple or frequent breaks	At [Student] request or if the teacher sees the need during the testing window	General education and special education
Visual modeling of behavior	When reviewing and teaching the skill	General education and special education

² In its investigation of this complaint, OSPI asked the District for more information on what "home district transportation" meant. The District stated: "We do not...have a clear answer on this. It appears that Student may have resided outside the District at some point previously, which led to his IEP [including this language]. The transportation portion of his IEP may have not been updated since he moved into the District."

The December 2017 IEP was signed by the following individuals: district representative, general education teacher, occupational therapist (OT), Parent, special education teacher, and speech language pathologist (SLP).

The "Present Level of Education Performance: Communication" portion of the Student's December 2017 IEP read, in part:

[Student] continues to demonstrate age-expected understanding and expression of language...The speech-language pathologist has been monitoring, and checking with staff for any needed supports. [Student's] general education teacher has reported no such needs this fall, as the paraprofessional has been present to assist [Student], when needed. This coming IEP year...staff wish to develop [Student's] independence with a set of skills typically acquired by 1st-2nd graders, having to do with self-management of potentially problem-level behaviors. These include participation, staying on task, sitting safely, moving in a lined-up group and transitioning. The [speech language pathologist] will continue to be available to team members...for consultation on an as-needed basis.

The December 2017 IEP notes that the Student spends a "total [of 1,800] minutes per week...in school" and a total of 60 minutes per week in a special education setting. According to the December 2017 IEP, then, the Student was supposed to spend 96.67% of his time in the general education setting.

7. As noted above, the Student's 2016 reevaluation report recommended that he receive supplementary aids and services in occupational therapy. The Student's December 2017 IEP, however, did not include this supplementary aid and service. The District explained this decision as follows:

Before Student's December 2017 IEP team meeting, Student had been receiving occupational therapy as a supplementary aid and service for deficits in the area of sensory processing. During that IEP meeting, Student's IEP team agreed that, based on Student's progress, it did not appear that his sensory processing deficits were impacting his ability to access his education. As a result, the team agreed that Student no longer required occupational therapy as a supplementary aid and service at that time. The team agreed that the occupational therapist would be available for informal consult to school personnel, if needed. Although the team did not believe Student required occupational therapy as a supplementary aid and service, the team offered access to sensory objects and activities as an accommodation.

8. On December 7, 2017, the Student's IEP team created a BIP for the Student. The December 2017 BIP read, in pertinent part:

Description of target behavior

Behaviors include lying on the floor, talking out, using a whiny voice when he doesn't want to do the task, sitting in his seat unsafely (Leaning/tying down), doing a different task than the one assigned, spinning around. The frequency of these behaviors occur 40% of the time through the school day. They range in duration...from lasting a few seconds to lasting up 10 minutes at a time. Intensity can range from minor (talking that is disrupting, sitting unsafely) to more disruptive (yelling out, laying on the floor, lifting a chair up)...[The target behavior appears to occur when Student is] in the hallway

walking in line throughout the school day [and when Student] is asked to transition tasks or transition from one place to another.

...

Setting Event Strategies

[Student]'s environment will include visual reminder(s) at his seat, daily schedule posted, visual cue (red/green) so teacher knows if there is a need.³

Antecedent Strategies

Antecedent strategies to help [Student] can include: review of expectations at the beginning of the school day, reminder of the daily goal/expected behaviors on his behavior chart, teach positive self-talk, teach how to use an inner coach, teach how to use nonverbal cues for support when needed, ask [Student] to model expected behavior for the class at times.

Teaching Strategies

[Student] will be taught how to use an inner coach (words to use, when to use it, how it can help, etc.). He will repeat daily expected behaviors and state his goal. Teachers will model how to use nonverbal cues and how to express what went well and what needs to be worked on, as well as practice of strategies to use when in class.

Consequence Strategies

If [Student] displays expected, on task behavior he will receive stars on his star chart. He will earn game, choice, and/or interaction time at the end of the day. He will receive positive praise.

If the target behavior (off task/disruptive) occurs, [Student] will lose stars, review expectations, practice expected skills, and debrief about what he struggled with that day and how he can make changes for the next day or the afternoon.

Reinforcement Plan

Staff will use a daily behavior plan sheet. [Student] will earn stars each 1/2 hour throughout the school day for the expected behavior. Daily behavior will be graphed so [Student] can see his improvement. For earning most of his stars or all of his stars, [Student] earns a game time, putty time, or an earned reward of his choice at the end of the school day before going to the buses. Expectations will be reviewed with [Student] and he will be taught strategies to help him meet his goal (inner coach, nonverbal cues, self-checks, etc.). Staff will give [Student] positive praise when he displays the expected behavior.

Response Plan

Staff will model appropriate behaviors and debrief with [Student] about the target behavior and the expected behaviors. [Student] will lose his stars and may not receive the earned reward at the end of the day.

De-escalation Plan

If there are times where the disruptive and off task behavior escalate then the following will occur:

³ According to the District, this language "refers to a cue card that was used by Student to let the teacher know if he was doing okay or if he needed assistance. Green was used to indicate that Student was doing okay and red was used to indicate that Student needed assistance."

Look out for these signs - increase agitation, raised voice level, tightened body (tense), facial expressions.

Steps to follow would be to use distraction measures to help get [Student] to come to the Nesting Autism room. Give [Student] tools to help him calm down (theraputty⁴, social story books, the analog clock, paper and pencil or crayons). Take away attention when behavior escalates, giving options every now and then. Say the options and walk away (check to ensure [Student] follows).

Crisis and Recovery Plan

Continue to use tools to help him calm down. Ask [Student] when he is ready to debrief (talk about the situation). Go over steps - what he did well, what happened, what he could do differently next time.

9. In January of 2018, with the Parent's permission, the Student was evaluated and found eligible for the "Highly Capable Self-Contained Advanced Individual Learning" (SAIL) program. The SAIL program was provided at a different District elementary school (elementary school 2).

In its response to this complaint, the District submitted a document that described the SAIL program. In part, it read:

SAIL is a full-time program for the top students district-wide in grades three, four, and five. The curriculum is compacted, allowing for in-depth extensions, and creative expression. SAIL classrooms are differentiated from traditional classrooms by the intellectual rigor, accelerated pace, autonomous learning, greater depth and breadth of content, and structured inquiry.

Please note...students enrolled in SAIL classrooms need to be able to perform these actions and feel comfortable with these educational approaches to participate in this type of highly capable service model. If not, they can receive Highly Capable Services in a different type of classroom setting. There are three different types of approved classroom settings that the State of Washington approves for Highly Capable services, and the...District utilizes all three types.

...

What happens if a student's IEP states that they need extra repetitions and/or all teacher led (step-by-step) instructions?

The Student would still receive Highly Capable services. However, the best classroom setting would not be the SAIL classroom due to the accelerated pace and the facilitator assisted structured inquiry. The best classroom setting to receive Highly Capable services would be in the Regular classroom through cluster grouping, enrichment, differentiated instruction, etc.

10. On February 16, 2018, the Parent was invited to attend an informational meeting regarding the SAIL program scheduled for February 20, 2018. According to the District, at that meeting

⁴ According to the website [sportsrec.com](https://www.sportsrec.com), theraputty "is a silicone material that can be used for a variety of hand exercises...theraputty exercises are commonly prescribed by physical and occupational therapists as part of a strengthening program." <https://www.sportsrec.com/228571-thera-putty-hand-exercises.html>.

(or soon thereafter), the "Parent chose for Student to transfer to [elementary school 2] for the 2018-2019 year to participate in the SAIL program."

Summer 2018

11. On August 27, 2018, in preparation for a meeting with the Parent scheduled for the next day, the SAIL teacher emailed the Parent, stating, in part: "I want to be sure we do everything we can to ensure a continuation of services for him at the beginning of his year. We haven't gotten his files yet, so I can't see what services he received in the past."
12. On August 28, 2018, the SAIL teacher met with the Parent and Student so that the Student could meet his teacher, see the SAIL classroom, and pick out his seat for the first day of school.

2018-2019 School Year

13. The District's 2018-2019 school year began on September 17, 2018. At the beginning of the 2018-2019 school year, the Student attended elementary school 2 and was in the third grade.
14. According to the District, "when the Student was at [elementary school 2] for the SAIL program for the first part of fall 2018, he was in the SAIL program for his entire school day, except when he was receiving [specially designed instruction (SDI)] in a special education setting."

According to the Parent, when the Student was at elementary school 2 for the first part of fall 2018, he was "in the SAIL classroom all day."

15. On October 1, 2018, the office coordinator for elementary school 2 emailed the Parent, stating, "Would you contact [elementary school 2] right away? [Student] cannot ride the bus home today because of behavior."
16. Later on October 1, 2018, the Parent met with the principal of elementary school 2. According to the District, at this meeting, the following topic was discussed: "options for supporting Student at [elementary school 2]."
17. On October 2, 2018, the Parent emailed the principal of elementary school 2, stating, in part:
Thank you for meeting with me yesterday to talk about [Student]. I have contacted the...SAIL program director regarding my concerns and requested both a meeting and an immediate placement of a para in [Student's] classroom. I would like to respond to a couple issues that were raised in yesterday's meeting:

[The SAIL teacher] voiced that she has high expectations of the kids in her classroom. While I understand that this is an accelerated learning environment, the group expectation model does not take into account children with special needs. I am concerned that this approach neither recognizes nor supports [Student] because he is not neuro-typical. I have researched the [collect, interpret, apply (CIA)] approach to reading...and I feel that this is an abstract way of comprehension and is obviously a trigger for [Student]. I would suggest that [the SAIL teacher] be more open to working with me so that I can fill in the gaps here.

I also wanted to address your comment about [Student] wanting attention and doing anything to get it. [Student's] outbursts are due to frustration and him not being able to articulate constructively his overwhelming irritation. This is a common misconception when dealing with a child with autism, but attention is not the intended response during a meltdown. Rather, it is the cessation of the triggering event.

I appreciate you working with [Student] and me on exploring ways to best support him at [elementary school 2]. I would suggest a less strict and more inclusive approach to the curriculum for him, including exploring placement in [another] classroom if you think his SAIL curriculum would be a better fit.

In a pair of emails exchanged between the Parent and the principal of elementary school 2 later that same day, it was determined that a meeting should be set up with the following individuals: Parent, principal of elementary school 2, SAIL teacher, highly capable program director, and special education teacher 1.

On October 3, 2018, in the same email thread, the Parent wrote the principal of elementary school 2 the following:

[Student] said he is very frustrated with CIA because he is so far behind and that is overwhelming to him. I instructed [Student] that when he starts to feel upset he needs to tell [the SAIL teacher] that he'd like to leave the classroom. I told him that he might need to wait for someone to come get him but to let her know right away so she can call for backup before things get out of control. Maybe it would be a good idea for a backup person to plan on being with [Student] in the classroom when CIA begins.

Later that same day, the principal of elementary school 2 responded, summarizing the ways in which the District was attempting to adapt the reading component of the SAIL program, including the CIA approach, to the Student's needs:

- "Incorporat[ing] choice and the use of graphic organizers;"
- "Giving [Student] some extended breaks with [special education teacher 3];" and,
- Planning for the Student and the SAIL teacher to meet that morning—the morning of October 3, 2018—"to talk about what [the SAIL teacher] can do to better help [Student] and develop a plan."

18. On October 3, 2018, the SAIL teacher wrote a separate email to the principal of elementary school 2, the Parent, the highly capable program director, and special education teacher 1. In this email, the SAIL teacher summarized the meeting she had had with the Student earlier that day. In pertinent part, it read:

Here's what [Student] requested:

1. A behavior chart. I let him create one. He explained to me how to use it. It's color-coded and it's my job to initial, using the correct color, every hour on the hour, indicating how he's doing. He determined the criteria and wording, and we are working together to work the bugs out of the system so it works for both of us.

Green = good: listening, following directions, doing the assigned work.

Yellow = maybe: using his peace center once, choosing not to do the work but then getting back to the assignment, requesting an office break.

Red = bad (his wording): using the peace center two or more times, having to go to the office not by choice.

We taped the chart to the empty desk next to him, and he's planning to take it home every day to show his mom. He said he'll be responsible to bring it back each day, and wants to make himself a new one each weekend.

So far today, I've initialed three times, two in green and one in yellow.

...

2. Verbal reminders about how much time is left in activities. He specifically asked to be told, rather than using a timer. It was offered, but he said he didn't like that idea. I haven't been too successful at remembering to do this today, but will continue to do my best to get this piece in place.

3. Extra time to walk the track at the end of recess with [special education teacher 2] talking about an academic topic of [Student's] choice.⁵

...

[W]e will figure out what kind of fidgets [Student] can store in the office to use while he's down there.

I welcome other ideas, but feel like this is a good start to helping [Student] meet his needs in class (I want to introduce the idea of some lists on his desk to help him stay organized, but a few things at a time is best. We've got enough new stuff for now).

19. According to the District, "due to [a] strike, the 2018-2019 school year began on September 17, 2018. Student was provided with a behavior chart beginning the first week of October."

20. On October 4, 2018, the SAIL teacher emailed the Parent, stating that the Student had had "a very rough morning." The SAIL teacher noted the following incidents:

- Student refused to work on a couple of assignments;
- At one point during the school day, the Student made funny faces under the overhead projector, ran around the classroom, and removed a decoration from the wall and "began throwing [it around] like a Frisbee;" and,
- At lunch, he refused to eat the lunch he had ordered "and went up on the stage, running around and playing with the curtains."

21. On October 8, 2018, the SAIL teacher emailed the Parent, the principal of elementary school 2, special education teacher 1, and the highly capable director. In this email, the SAIL teacher summarized the Student's performance in her classroom that morning. In pertinent part, it read:

[Student] worked hard this morning [on math]. When reading time came, however, he jumped out of his seat and started running around the classroom...he yelled over and over that he was going to tear up his reading...he [eventually] sat quietly and drew pictures for

⁵ The District explained that providing the Student with "verbal reminders about how much time is left in activities" and "extra time to walk the track at the end of recess" were both attempts to help the Student make smooth transitions between activities during his day, as this was an issue outlined in his December 2017 BIP.

the remainder of the morning...we need to discuss what to do when [Student] doesn't complete the work assigned...[Student] told me this morning that he wasn't going to use a behavior chart today. He didn't take his charts home last Thursday or Friday, either. Tomorrow, I will give him an option of two different charts, but not using one won't be an option.

On the afternoon of October 8, 2018, the SAIL teacher emailed the same individuals an update on the Student's performance in her classroom that afternoon. In pertinent part, this email read:

[About 2:30 in the afternoon, Student] pushed back his chair and started making loud noises, and blurting seemingly random statements. We were unable to complete our discussion. He crawled on the floor and ended up under my desk where he was kicking the underside of the desk loudly. I asked him to come out. He did, and we looked together at a reminder note from last year's teacher that has four steps to help him remember expectations. He yelled that he wasn't going to have it on his desk. I told him I wasn't putting it on his desk, just pulling it out because sometimes we all need reminders. He then threw a heavy plastic sit-upon at my face from close range. I deflected the sit-upon and called for assistance. He continued to sit at my desk, spinning my chair, putting his feet on the board, and banging the smartboard...until [the principal] arrived.

22. On October 9, 2018, the SAIL teacher emailed the Parent, stating, in part:

I have put together a binder for [Student]. He will be given a choice of behavior tracking forms, but not using one will not be an option. Assuming he is in class at the end of the day, I will staple the form in his agenda for you to see, since he hasn't taken one home in several days.

In his binder, I also have the behavior agreement he and I developed as well as some of the tools he used last year that his teacher sent along. He is adamant that they not go on his desk. I will pull the binder out when he indicates that he's overwhelmed, and provide him with support that way.

He will continue to be given choices in his work today, as he has been since we last spoke. His options are always at the same level as what the other students are doing. He chose to do assignments yesterday morning until around 11:30, then chose to draw for the rest of the day until the incident in the late afternoon.

23. According to the District, on October 10, 2018, the principal of elementary school 2, the SAIL teacher, the director of the highly capable program, special education teacher 1, and the Parent met "how to discuss how to support Student at [elementary school 2]. Among other things, they agreed that Parent would be given the opportunity to sit-in Student's class to observe how he was doing."

According to the Parent, before this meeting took place, she observed the Student's work space. She described the Student's work space as follows: "jacket was strewn on floor, papers everywhere, complete disarray."

24. On October 11, 2018, the Parent observed the Student's SAIL classroom. In pertinent part, the Parent's recollection is as follows:

[I] helped organize [Student's] desk with the help of [special education teacher 2]. [The SAIL teacher] did not accommodate [Student] (according to his IEP) in the following ways: no pull-out time for social instruction, second time using visual schedule. At desk—non-visual erasable schedule. Interacted with [Student] for individual instruction for less than one minute.

In a supplemental reply, the Parent further stated:

I was in the SAIL classroom on October 11, 2018 from 10:30 a.m. to 2:30 p.m. The schedule at [Student's] desk was 8.5 x 11 and taped [to his desk]. It was laminated and when I observed it, there was nothing on it. When I inquired [of the SAIL teacher, she] said it was erasable and [Student] had erased it.

25. On October 15, 2018, the Parent emailed the SAIL teacher, the principal of elementary school 2, the highly capable program director, and special education teacher 1, stating, in part:

I will be sitting in class with [Student] again tomorrow...I appreciate the opportunity to sit in last Thursday to see how he's doing first hand, and to understand what supports he needs to be successful. There are a number of things in his IEP that should've been in place since day one, and it is my opinion that the behaviors he's exhibiting are a direct result of these supports not being used.

For example: a visual schedule, one-on-one instructions, and being pulled out of the gen ed classroom for social/emotional support.

I also noticed that there is no position for paraeducator posted on the...jobs site for [elementary school 2]—how can anyone fill a position that isn't available?⁶...I have suggestions for the visual schedule that we should discuss asap since this is important to implement immediately.

Later that same day, the SAIL teacher responded, stating, in part:

I was looking through [Student's] most recent IEP, and couldn't find any reference to a visual schedule. Please clarify further. Regarding 1:1 instructions, I have been providing him with 1:1 support at the beginning of each lesson, explaining what the class will be doing and what his choices are. Are there further 1:1 instructions that he requires?

According to the District:

Student's December 7, 2017 IEP does not include a visual schedule as an accommodation/modification or otherwise refer to a visual schedule. Student's December 7, 2017 BIP states that Student's environment would include a daily schedule posted. Student's SAIL teacher was not provided a copy of Student's December 2017 BIP before the 2018-2019 school year began. Nonetheless, beginning on September 17, 2018 (the first day of school), a large visual schedule was posted in Student's classroom and was referenced by the teacher multiple times throughout the day. The SAIL teacher noted

⁶ According to the Parent, the reference to a paraeducator in this email refers "to [the] multiple instances where I was told there would be one in the SAIL classroom. First was at a meeting with the District highly capable [program director]...the second time was when I met with [the SAIL teacher] in late August and she said that she had the option to request a para and I said yes, and I assumed there would be one...another reference to a para in the classroom was during the meeting [on] October 11, 2018—[the SAIL teacher] told the special education director that she needed help in the classroom."

visually any changes to the schedule and provided visual and verbal prompts regarding the changes prior to the activity.

26. According to the Parent, on October 15, 2018:

[I] spent the morning in [the SAIL classroom]...I left at 1 pm, was called back at 2 pm to pick up [Student] due to behavior problems. [The principal] threatened suspension, gave choice to move [Student] to [elementary school 1], said he'd contact/arrange transfer with [the principal of elementary school 1] (he didn't and I had to call District's special education [sic] on the morning of October 16, 2018.)

The Parent also stated:

There was no phone call to [elementary school 1], yet [the SAIL teacher] had already packed up the contents of [Student's] desk. On October 16, my son was not registered at any school in the...District. I checked the Home Access page, and he was not listed there. The fact is that [elementary school 2] and the [District] failed to initiate a transfer and my son was left without a school to attend.

27. According to the Parent, the District agreed to complete a "behavioral analysis" of the Student during the week of October 15, 2018, but then never did so.

According to the Parent:

[An] FBA was suggested and agreed to verbally at the meeting on Wednesday, October 10, 2018. The District special education representative said one could be scheduled asap meaning early next week—because there was no school that Friday and getting someone out there the next day was unlikely. It was understood this was a priority and needed to happen immediately. There was also an agreement that [Student] would stay at [elementary school 2] at least for that next week with a commitment to implement all his IEP strategies to help him succeed...none of [this] happened.

According to the District:

There was not an agreement to complete a new [FBA]. However, on October 10, 2018, while Student was enrolled at [elementary school 2], a meeting was held regarding Student's behavior. The District offered to have a behavior specialist observe Student at [elementary school 2] and work with the IEP/SAIL team. The behavior specialist was available to observe Student the following week.

During the week of October 15, 2018, Parent informed the school that she wanted Student to transfer back to [elementary school 1] from [elementary school 2]. Parent was informed that the behavior specialist was planning to observe Student at [elementary school 2] later that week, but Parent continued to want Student to return to [elementary school 1]. The behavior specialist consulted with Student's special education teacher at [elementary school 1] and was available to observe and work with the team if needed. There were no behavioral incidents or issues that required intervention at [elementary school 1].

28. On October 16, 2018, the student services liaison emailed the principal of elementary school 1, stating, in part:

After speaking with [Student's] mother today, she would like [Student] to return to [elementary school 1]. Transportation can be set up to begin on Monday (possibly it will

take until Tuesday)...[Parent] will be able to transport [Student] to and from school until transportation begins.

...

[Parent] has requested that [Student] have access to the highly capable material as discussed at the meeting at [elementary school 2] next week. I am copying [the highly capable program director] so that we can all work together to develop a plan for [Student] to continue to have access to accelerated/high cap materials. I have also copied the elementary director of student services, to keep him updated.

29. According to the District, while the Student was enrolled in the SAIL program at elementary school 2, the Student did not receive the specially designed instruction in a *general education setting* that was provided for in his December 2017 IEP.

In regard to whether the Student was receiving the specially designed instruction in a *special education setting* that was provided for by his December 2017 IEP while he was in the SAIL program at elementary school 2, the District stated:

[Special education teacher 2] was the special education teacher for Student while he was in the SAIL program...[Special education teacher 2] met with Student a handful of times. She also met with Student's general education teacher a handful of times. Unfortunately, we do not have a record of the specific days or times that she met with him or his teacher.

30. According to the District, the Student enrolled at [elementary school 1] on October 18, 2018.

31. According to the District:

From October 18 to December 21, 2018 [(the last day of school for the fall semester)], Student received SDI in a special education setting from 9:00 a.m. through 9:20 a.m. Monday through Friday and 11:20 a.m. through 12:00 p.m. on Tuesdays and Thursdays.

From October 18 to December 21, 2018, Student received SDI in a general education setting on a daily basis from 9:40 a.m. through 10:10 a.m., 1:00 p.m. through 1:15 p.m., 1:30 p.m. through 2:00 p.m., and 2:30 p.m. through 3:00 p.m.

32. On October 19, 2018, the District issued the Parent a prior written notice, proposing to initiate the provision of highly capable materials for the Student in the classroom with support, which read, in part:

[Student] is returning to [elementary school 1] after attending SAIL classroom for highly capable students at [elementary school 2] for 5 weeks...Preference to return to [elementary school 1] due to educational fit that supports [Student's] learning style...[SAIL program director, Parent, general education teacher 1, elementary school 1 principal, special education teacher 1, and student services liaison] met to discuss curriculum to support [Student's] highly capable needs and how it can be utilized in the classroom. [SAIL program director] provided differentiated instruction materials for reading, math, writing, social studies, and science. He provided offers for staff to attend highly capable professional learning network meetings held monthly. Strategies to support [Student's] specific needs were discussed including social stories, using iReady and Kahn Academy and providing opportunities for project based learning.

33. According to the District, transportation for the Student to-and-from elementary school 1 was set up as of October 22, 2018; the "Student did not receive school bus transportation on October 18 and 19, 2018."

Despite the lack of transportation, the Student did attend school on October 18 and 19, 2018—the Parent transported the Student to school.

34. On October 24, 2018, the Parent emailed the student services liaison, stating, in part:
I have another concern...[Student] is on his afternoon bus for [one hour and twenty minutes] (arrives home at 4:50 pm).⁷ He arrives home dehydrated, hungry, and very cranky, and I believe it's a matter of days before there will be a meltdown on the bus coming home. Since he is on so long, I provide him a snack and drink but apparently he is not allowed to eat/drink on the bus.

Later that same day, the student services liaison responded, stating, in part: "I spoke to the director of transportation and he stated that [Student] should be allowed food and drink on the bus and that he would speaking to the driver about this situation. It is not actually a rule that he can't eat or drink on his bus."

35. According to the District, on October 30, October 31, and November 1, 2018: "A number of the District's bus drivers who transported students with disabilities participated in a 'sick-out' related to collective bargaining matters. As a result, the District was unable to provide transportation for many special education students, including Student, on those three days."

Despite the lack of transportation, the Student did attend school on October 30, October 31, and November 1, 2018—the Parent transported the Student to school.

In its response, the District stated, "Because the District was unable to provide transportation on October 18, 19, 30, and 31, 2018, and November 1, 2018, the District will provide Parent with mileage reimbursement for transporting Student on those dates."

36. According to the Parent, in a conversation after school on November 9, 2018, general education teacher 1 "affirmed that the highly capable workbooks are not being used to supplement [Student's] education."
37. According to the Parent, on November 13, 2018, the Student's morning bus was fifty-two minutes late, making him late for the start of class.
38. According to the Parent, on November 14, 2018 the Student's "morning bus did not come...[District] transportation said the bus driver came and no one was here so he left. This is not true as we were waiting for the bus all morning...another bus was dispatched...second day in a row that [Student] has missed a portion of his morning classes."

⁷ In her complaint, the Parent stated that the Student arrived home from the bus each day between 4:45 p.m. and 5:15 p.m.

39. On November 14, 2018, the Parent emailed the student services liaison, stating, in part: "I have been picking [Student] up most days though to avoid any potentially dangerous situation on the bus—the last time he rode the bus home was last Wednesday, [November] 7, 2018."⁸

40. According to the District, on November 15, 2018, the SAIL program director met with the Parent, one of the Student's general education teachers, and one of the Student's special education teachers:

To discuss ways to incorporate highly capable programming into the general education classroom at [elementary school 1]...During [this meeting], Student's general education teacher discussed how Student had designed a game in the classroom. [The SAIL program director] provided suggestions of other project-based learning activities that could be used with Student, which included activities involving geography and maps.

41. According to the District:

[Student's] bus ride to [elementary school 1] is approximately 76 minutes. Because of the location of Student's home and homes of the other students who are on the same bus route as Student, it is not reasonably possible for Student's bus ride to be less than 60 minutes to school. However, Student's bus ride home from [elementary school 1] is only approximately 19 minutes, so Student does not ride the bus for more than 120 minutes per day.

On this point, the District also stated:

Student's morning bus ride to [elementary school 1] is longer because he is the first student picked up on the route and there is a larger catchment area of students picked up on his morning route because routes were consolidated. Student's afternoon route is shorter because he is one of the first students dropped off...and the route has a smaller radius of students who are dropped off.

42. On November 28, 2018, the Student's IEP team created a new annual IEP for the Student. The November 2018 IEP included annual goals in the area of social emotional/behavioral. The IEP provided the Student with the following specially designed instruction in a *general education setting*:

- Social emotional/behavioral—90 minutes five times a week (to be provided by special education staff)

The November 2018 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Social emotional/behavioral—15 minutes five times a week (to be provided by special education staff)
- Social emotional/behavioral—30 minutes two times a week (to be provided by a special education teacher)

⁸ The original draft of this email stated that the last time the Student rode the bus home was on Wednesday, October 7, 2018. October 7, 2018 was a Sunday. November 7, 2018, however, was a Wednesday. Therefore, upon knowledge and belief, the Parent meant to include November 7, 2018 in this email.

The November 2018 IEP provided the Student with the following related services in a *special education setting*:

- Home district transportation—45 minutes two times daily (to be provided by home transportation services)

The November 2018 IEP provided the Student with the following accommodations:

Accommodation	Frequency	Location
Access to sensory objects and activities	As the teacher sees the need	General education and special education
Breaks available when frustration level accelerates	When [Student] or the teacher sees the need	Special education
Check for understanding and go over assignments	When given new assignments	General education and special education
Give tests in small group setting or 1:1	As the teacher sees the need throughout the testing window	Special education
Multiple or frequent breaks	At [Student] request or if the teacher sees the need during the testing window	General education and special education
Use of timer and/or verbal time keeping—countdown for informing about when it's close to the end of a task	Throughout the school day	General education and special education
Visual modeling of behavior	When reviewing and teaching the skill	General education and special education

The November 2018 IEP was signed by the following individuals: district representative, general education teacher, Parent, and the special education teacher.

The November 2018 IEP notes that the Student spends a "total [of 1,800] minutes per week...in school."

43. On November 28, 2018, the Student's IEP team created a new BIP for the Student. The November 2018 BIP reads, in pertinent part:

Setting Event Strategies

[Student]'s environment will include visual reminder(s) at his seat, daily schedule posted, visual cue (red/green, thumbs up/thumbs down)

Antecedent Strategies

Antecedent strategies to help [Student] can include...reminder of the daily goal/expected behaviors on his behavior chart.

...

Consequence Strategies

If [Student] displays expected, on task behavior he will receive stars on his star chart...If the target behavior (off task/disruptive) occurs, [Student] will lose stars.

Reinforcement Plan

Staff will use a daily behavior plan sheet. [Student] will earn stars each 1/2 hour throughout the school day for the expected behavior. Daily behavior will be graphed so [Student] can see his improvement. For earning most of his stars or all of his stars, [Student] earns a game time, putty time, or an earned reward of his choice at the end of the school day before going to the buses.

Response Plan

[Student] will lose his stars and may not receive the earned reward at the end of the day. Staff will go over with [Student] what behavior occurred and steps/changes to work on next time.

44. On November 28, 2018, the District issued a prior written notice to the Parent, which read, in part:

The team discussed the possibility of doing the re-evaluation early (in the spring instead of Next November) due to the possibility of a family move. We also discussed looking at Speech when the re-evaluation takes place. When there seems to be a need for sensory supports for Student, members of the team will consult with the Occupational Therapist to help put those needed supports in place.

In a supplemental reply, the District provided clarity on this portion of the November 28, 2018 prior written notice:

As noted in Student's November 28, 2018 IEP, Student had communication support available through consultation by the speech-language pathologist. However, at the time of that IEP team meeting, Student's teachers had not observed any communication-related needs. Nonetheless, the team agreed that the SLP would continue to be available for consultation to school personnel on an as-needed basis. The team also discussed the possibility of reevaluating Student in the area of speech during his next evaluation, as his needs could change.

Before Student's December 2017 IEP team meeting, Student had been receiving occupational therapy as a supplementary aid and service for deficits in the area of sensory processing. During that IEP meeting, Student's IEP team agreed that, based on Student's progress, it did not appear that his sensory processing deficits were impacting his ability to access his education. As a result, the team agreed that Student no longer required occupational therapy as a supplementary aid and service at that time. The team agreed that the occupational therapist would be available for informal consult to school personnel, if needed. Although the team did not believe Student required occupational therapy as a supplementary aid and service, the team offered access to sensory objects and activities as an accommodation. Student's November 28, 2018 IEP also included access to sensory objects and activities as an accommodation. The team agreed to consult with the occupational therapist to help put those supports in place.

45. The Parent's reply contains a time-stamped image of a bus on December 13, 2018, which she says is the Student's bus arriving home, with a time of 4:42 p.m.
46. The District's last school day of the fall 2018 semester was December 21, 2018.

47. According to the District, while the Student was enrolled at elementary school 1 during the latter half of the fall 2018 semester, his afternoon bus left school between 3:30 p.m. and 3:40 p.m.
48. In its investigation of this complaint, OSPI asked the District, "Was the Student provided with a STAR chart" while he was in the SAIL classroom?"—as was required by the December 2017 BIP. The District responded, "A STAR chart is a type of behavior chart used to reinforce positive behavior. Student and his SAIL teacher worked collaboratively to develop a different type of behavior chart that was used in the SAIL classroom."

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged that the District did not implement the Student's December 2017 IEP and BIP while he attended the SAIL program at elementary school 2 during the first part of the fall 2018 semester. Specifically, the Parent stated that the Student was not provided with a visual schedule, one-on-one instructions, and pull-out to a special education setting for specially designed instruction in social/emotional.

A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

Visual Schedule

The Student's December 2017 BIP stated that the Student's "environment will include visual reminder(s), at his seat, daily schedule posted." The SAIL teacher was apparently unaware that this was required by the December 2017 BIP. For example, in an email, dated October 15, 2018, she said, "I was looking through Student's most recent IEP, and couldn't find any reference to a visual schedule." The District also explained that the SAIL teacher was not provided a copy of the Student's December 2017 BIP "before the 2018-2019 school year began." However, despite the SAIL teacher's lack of awareness of this requirement, it appears to have been provided, as the teacher had a large visual schedule posted in the classroom that she referenced and used to note visually any changes.

It also appears that a separate schedule was placed on the Student's desk; on October 11, 2018, when the Parent observed the SAIL classroom, she observed that there was an 8.5 x 11, laminated, erasable schedule taped to the Student's desk. When the Parent observed the Student's desk schedule on October 11, 2018, it was blank. The SAIL teacher explained that the Student had erased it.

In light of the foregoing, despite the SAIL teacher's lack of awareness of the requirement to provide the Student with a visual schedule, this portion of the December 2017 BIP was properly implemented.

SAIL Teacher Not Provided Copy of December 2017 BIP

A 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. Here, the SAIL teacher was not provided with a copy of the Student's December 2017 BIP by the beginning of the 2018-2019 school year. This is a violation of the IDEA.

Behavior Chart

The Student's December 2017 BIP required that the Student be provided with a behavior chart—the December 2017 BIP refers alternatively to a "behavior chart," a "daily behavior plan sheet," and a "star chart." The District concedes, and the record demonstrates, that the Student was not provided with a behavior chart in the SAIL classroom until the beginning of October. This, then, was a failure to implement the December 2017 BIP.

One-on-One Instruction

The Parent's allegation on this point is unclear. No portion of the Student's December 2017 IEP or BIP explicitly uses the phrase "one-on-one instruction." The IEP does include accommodations for "give tests in small group setting or 1:1" and "visual modeling of behavior."

In an email, dated October 15, 2018, the SAIL teacher stated, "Regarding 1:1 instructions, I have been providing him with 1:1 support at the beginning of each lesson, explaining what the class will be doing and what his choices are. Are there further 1:1 instructions that he requires?" Given the fact that the Student's December 2017 IEP and BIP do not include the phrase "one-on-one instruction," and the fact that the SAIL teacher was actually providing the Student with some "one-on-one instruction," OSPI cannot find an implementation failure on this point.

December 2017 Service Matrix at Elementary School 2

While the Student was enrolled in the SAIL program at elementary school 2, the Student's December 2017 IEP was in effect. Under that IEP, the Student was supposed to receive 600 minutes (10 hours) a week of social emotional specially designed instruction in the general education setting and an additional hour of specially designed instruction in the special education setting.

The District stated that the Student was not provided specially designed instruction during this time period. This is a violation of the IDEA and a material failure to implement the IEP.

A state educational agency is authorized to order compensatory education through the special education citizen complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed.

Generally, services delivered on a one-to-one basis are delivered effectively in less time than if the services were provided in a classroom setting.

According to the District's calendar, from September 17, 2018 through October 17, 2018, there were approximately 4.5 weeks of school. Therefore, during this time, the Student missed approximately 2,970 minutes or 49.5 hours of specially designed instruction (2,700 minutes in a *general education setting* and 270 minutes in a *special education setting*). The District will be required to provide the Student with compensatory education equal to half of these figures: 1,485 minutes or 24.75 hours.

December 2017 IEP Service Matrix at Elementary School 1

From October 18 through November 27, 2018, the Student was enrolled at elementary school 1 and his December 2017 IEP was in effect.

According to the District, during this time, the Student received 160 minutes of specially designed instruction each week in a *special education setting*.⁹ The Student's December 2017 IEP, though, stated that the Student was to receive 60 minutes of specially designed instruction each week in a *special education setting*. Therefore, during this time, the Student was receiving 100 minutes more of specially designed instruction in a *special education setting* each week than was called for by the Student's IEP.

According to the District, during this same time, the Student received 525 minutes of specially designed instruction each week in a *general education setting*.¹⁰ The Student's December 2017 IEP, though, stated that the Student was to receive 600 minutes of specially designed instruction each week in a *general education setting*. Therefore, during this time, the Student was receiving 75 minutes less of specially designed instruction in a *general education setting* each week than was called for by the Student's relevant IEP.

According to the District's calendar, from October 18, 2018 through November 27, 2018, there were approximately 5 weeks of school. Therefore, during this period, the Student missed approximately 375 minutes of specially designed instruction in a *general education setting* and received 500 extra minutes of specially designed instruction in the *special education setting*.

While overall the Student may have been receiving additional specially designed instruction, the District was not implementing the IEP as written, as the Student was receiving that additional instruction in the special education setting and fewer minutes than required in the general education setting.

⁹ According to the District, during this time period, the Student received specially designed instruction in a special education setting for 20 minutes 5 times a week (100 minutes) and 30 minutes 2 times a week (60 minutes), for a total of 160 minutes.

¹⁰ According to the District, during this time period, the Student received specially designed instruction in a general education setting for 105 minutes a day for 5 days a week (525 minutes).

November 2018 IEP Service Matrix at Elementary School 1

From November 28, 2018 through December 21, 2018, the Student was enrolled at elementary school 1 and his November 2018 IEP was in effect.

According to the District, during this time, the Student received 160 minutes of specially designed instruction each week in a *special education setting*. The Student's November 2018 IEP, though, stated that the Student was to receive 135 minutes of specially designed instruction each week in a *special education setting*. Therefore, during this time, the Student was receiving 25 minutes more of specially designed instruction in a *special education setting* each week than was called for by the Student's relevant IEP.

According to the District, during this same time, the Student received 525 minutes of specially designed instruction each week in a *general education setting*. The Student's November 2018 IEP, though, stated that the Student was to receive 450 minutes of specially designed instruction each week in a *general education setting*. Therefore, during this time, the Student was receiving 75 minutes more of specially designed instruction in a *general education setting* each week than was called for by the Student's relevant IEP.

According to the District's calendar, from November 28, 2018 through December 21, 2018, there were approximately 3 weeks of school. Therefore, during this period, the Student received: a) approximately 225 minutes of specially designed instruction in a *general education setting* in excess of that required by his November 2018 IEP; and b) approximately 75 minutes of specially designed instruction in a *special education setting* in excess of that required by his November 2018 IEP.

Again, while the Student may have been receiving extra specially designed instruction during this period, the District was not implementing the IEP as written.

Issue Two: Placement – The Parent alleged that the District did not follow proper procedures for determining the Student's placement during the 2018-2019 school year. When determining the educational placement of a student eligible for special education, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; least restrictive environment requirements; the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

SAIL Program at Elementary School 2

In regards to the decision to enroll the Student in school 2 for the 2018-2019 school year, the record shows: in January 2018, the Student was evaluated and found eligible for highly capable services; the Parent attended an informational meeting on February 20, 2018; the Parent subsequently "chose for Student to transfer to [elementary school 2] for the 2018-2019 year to

participate in the SAIL program;" and the Parent and Student met with the SAIL teacher a couple days before the 2018-2019 school year started.

Importantly, the record shows that this was intended to be a change of location—and not a change of placement. The District and the Parent intended that the Student's December 2017 IEP be implemented while he was enrolled in the SAIL program at school 2; in other words, the intent was that the Student would continue to receive the same service minutes (length and type), as well as the same accommodations and modifications, that he had been receiving while at school 1 during the latter part of the 2017-2018 school year. For example, before the start of the 2018-2019 school year, the SAIL teacher and the Parent met, in part, to ensure a "continuation of services" for the Student. Therefore, as this was not intended to be a change in placement, the District followed proper procedures in deciding to enroll the Student in school 2 for the 2018-2019 school year.

Return to Elementary School 1

The District did not convene an IEP team meeting (or issue a prior written notice), prior to returning the Student to elementary school 1. The District explains that this was because "the transfer was a change in location...not a change in placement [and therefore] an IEP team meeting was not necessary." This is inaccurate in this situation. 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.

Here, the Student received specially designed instruction (both in a general education setting and a special education setting) while he was at elementary school 1; the Student did not receive any specially designed instruction (in either a general education setting or a special education setting) while he was at elementary school 2. Functionally, the Student was in the general education setting 100% of his time while at elementary school 2, but when he was at elementary school 1, he was in the general education setting 91% of the time. Therefore, at a minimum, the Student's IEP team should have met to discuss: the Student's IEP; least restrictive environment requirements; the placement options that provided the Student with a reasonably high probability of assisting the Student to attain his annual goals; and any potential harmful effect on the Student or on the quality of services which he needed. The fact that this did not occur means the IDEA was violated.

OSPI notes that, had the Student's December 2017 IEP actually been implemented in both school 2 and school 1, the change in buildings would not have constituted a change in placement. Placement refers to the provision of special education and related services rather than a specific place, such as a specific classroom or specific school. However, as noted above, since, while in school 2, the Student was functionally in a general education setting for 100% of the time, but,

while he was at school 1, he was in the general education setting for 91% of the time; this constituted a change of placement and the procedures specified above should have been followed.

Issue Three: IEP Amendment – In her complaint, the Parent implied that the District did not amend the Student’s IEPs so that they reflected the services that were actually provided to the Student. An IEP must include a statement of the special education and related services and supplementary aids and services that will be provided to the student. An IEP must also include a statement of the program accommodations and modifications 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. After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead, may develop a written document to amend or modify the student's current IEP.

Specially Designed Instruction and Accommodations at Elementary School 2

As detailed above, the Student did not receive the specially designed instruction included in his December 2017 IEP while he attended elementary school 2. Either: a) the Student should have received specially designed instruction in accordance with his December 2017 IEP; or, b) if the Student’s needs had changed, then the Student’s December 2017 IEP should have been amended (after an IEP meeting with the Parent), to reflect the actual services that he was going to both need and receive. Therefore, this is a violation of the IDEA.

Specially Designed Instruction at Elementary School 1

As detailed above, when the Student returned to elementary school 1 during the latter half of the fall semester, he did not receive specially designed instruction in accordance with either his December 2017 IEP or his December 2018 IEP. Either: a) the Student should have received services in accordance with these IEPs; or b) the Student’s IEPs should have been amended, after an IEP meeting with the Parent, to reflect the actual services that he needed and was going to receive. Therefore, this is a violation of the IDEA.

Issue Four: Transportation and WAC 392-172A-02095(5) – WAC 392-172A-02095(5) reads, in part: “Whenever reasonably possible, no student should be required to ride more than sixty minutes one way.”

Here, according to the District, the Student’s ride to elementary school 1 is approximately 76 minutes and his ride home from elementary school 1 is approximately 19 minutes.

The record, though, suggests that the Student’s ride home from elementary school 1 is (occasionally or frequently) longer than 19 minutes. For example, the District stated that, while

the Student was enrolled at elementary school 1 during the latter half of the fall 2018 semester, his afternoon bus left school between 3:30 p.m. and 3:40 p.m. And the Parent stated that the Student arrives home from school between 4:45 p.m. and 5:15 p.m. (The Parent's reply contains a time-stamped image of a bus on December 13, 2018, which she says is the Student's bus arriving home, with a time of 4:42 p.m.)

It ought to be reasonably possible for the District to craft a transportation schedule and route that does not require the Student to sit on the bus for over 60 minutes in either the morning or the afternoon. This is particularly important in this case, as the Student has behavioral challenges that appear to be expressed, in part, when the Student is frustrated, and the Parent notes that, when he is required to be on the bus for over 60 minutes, he becomes "dehydrated, hungry, and very cranky." Therefore, the current arrangement represents a violation of WAC 392-172A-02095(5).

Issue Five: Transportation and FAPE – The Parent alleged that the District denied the Student access to a free appropriate public education (FAPE) by inconsistently providing the Student with transportation from October 18, 2018 until the end of the fall semester. If a school district fails to comply with the procedural elements set forth in the IDEA, the district is not in compliance with the IDEA. Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE; and, (3) caused a deprivation of educational benefits.

Here, the District did not provide transportation for the Student on five occasions (October 18, 19, 30, and 31, and November 1, 2018). On these days, though, the Student did attend school—the Parent transported the Student to and from school. Therefore, the District's failure to provide transportation on these days did not amount to a denial of FAPE. However, in accordance with its offer, the District will be required to reimburse the Parent for her mileage for transporting the Student to and from school on these days.

CORRECTIVE ACTIONS

By or before, **February 6, 2019, February 11, 2019, March 6, 2019, March 29, 2019, May 10, 2019,** and **September 23, 2019,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **January 30, 2019,** the District and the Parent will hold an IEP team meeting. At this meeting, the following three issues will be discussed:
 - a) How many minutes of specially designed instruction in social emotional/behavioral the Student requires (in both a *special education setting* and a *general education setting*). If these figures differ from the Student's November 2018 IEP, then the IEP will be updated to reflect these new figures. By **February 4, 2019,** the Student's schedule will be set up in a manner that permits him to receive the amount of specially designed instruction included in his IEP.

- b) The proper placement for the Student, including consideration of a full continuum of alternative placement options.
- c) The Student's transportation (bus route) and the proper language to use in the Student's IEP as concerns the provision of transportation services (or the lack thereof). (OSPI notes that the District states that the Related Service of "Home District Transportation Services" is a holdover from an outdated IEP.)

By **February 4, 2019**, the District will: 1) create a new IEP for the Student that reflects any changes resulting from this meeting; 2) provide the Parent with a copy of the Student's new IEP; 3) provide the Parent with a prior written notice that explains the decisions that were made (and the reasons those decisions were made); and, 4) provide each of the Student's teachers and service providers that will be responsible for implementation of the IEP a copy of the IEP.

By **February 6, 2019**, the District will provide OSPI with 1) a copy of any meeting invitations (i.e., notice of meeting); 2) a sign-in sheet from the IEP meeting; 3) a copy of the new IEP; 4) a copy of any related prior written notices; 5) a copy of any correspondence with the Parent regarding the IEP meeting and the decisions made at that meeting; 6) proof that each of the Student's teachers and service providers that will be responsible for implementation of the IEP have been provided with a copy of the IEP and informed of their respective responsibilities; 7) proof that the Student's schedule has been changed to ensure he's receiving the specially designed instruction outlined in his IEP; and, 8) a copy of any other relevant documentation.

- 2. By **February 6, 2019**, the District will provide OSPI with documentation that it has reimbursed the Parent for the transportation services she provided on the following dates: October 18, 19, 30, and 31, and November 1, 2018. The District will reimburse the Parent for mileage at the District's privately owned vehicle rate.
- 3. By **February 6, 2019**, the District will provide OSPI with documentation that it has rearranged the Student's bus schedule so that he is not on the bus for over 60 minutes in either the morning or the afternoon.
- 4. By **January 30, 2019**, the District will work with the Parent to develop a schedule to provide the Student with the 24.75 hours of specially designed instruction in social emotional/behavioral.

The services will be provided outside of the District's regular school day. The services will be provided to the Student on a one-to-one basis—the sessions will be comprised of the Student and the certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **September 18, 2019, regardless of any need to reschedule**. The District will provide OSPI with documentation of the schedule by **February 6, 2019**.

The District will be required to provide OSPI with periodic progress reports on the provision of compensatory education to the Student: On **March 29, 2019** and **May 10, 2019**, the District will provide OSPI with documentation of the compensatory services that have been provided up until those respective dates.

No later than **September 23, 2019**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with the documentation pertinent to this corrective action by **September 23, 2019**.

DISTRICT SPECIFIC:

1. By **March 1, 2019**, the District will provide training on the topics listed below to the following individuals at schools 1 and 2: all special education administrators, the principal, the assistant principal, special education certified staff, including educational staff associates (ESAs), and general education teachers who have (or will have) students with IEPs in their respective classrooms at any time during the 2018-2019 school year. The topics that will be covered in the training:
 - a. The required components of an IEP, including the fact that an IEP must include an accurate statement of the special education, related services, accommodations, modifications, and supplementary aids and services that the student requires (WAC 392-172A-03090);
 - b. The fact that IEPs must be implemented as written (WAC 392-172A-03105(2)(b));
 - c. The fact that: i) IEPs must be accessible to each general education teacher, special education teacher, related service provider, or any other service provider who is responsible for its implementation; and ii) each teacher and provider is informed of his or her specific responsibilities related to implementing the student's IEP (WAC 392-172A-03105(3));
 - d. Proper placement procedures, including the need to consider a continuum of alternative placements (WAC 392-172A-02055 and WAC 392-172A-02060).

The training will include examples. The training can be presented by someone who is an employee of the District. However, the District will collaborate with its local educational service district (ESD) in drafting the training.

By **February 11, 2019**, the District will provide a draft of the training materials to OSPI. OSPI will either approve or submit requested changes to the training materials by February 15, 2019.

By or before **March 6, 2019**, the District will provide OSPI with a sign-in sheet that lists those individuals who attended the training. The District will also provide a roster of the following individuals at schools 1 and 2: all special education administrators, the principal, the assistant principal, special education certified staff, including educational staff associates (ESAs), and general education teachers who have (or will have) students with IEPs in their respective classrooms at any time during the 2018-2019 school year.

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.

RECOMMENDATION

The Parent stated that the District told her a paraeducator would be provided for the Student while he was in the SAIL classroom at school 2. The Student's December 2017 IEP does not provide for a paraeducator. The record is unclear on what, if any, paraeducator services the Student required or was provided with during the 2017-2018 school year. OSPI recommends that the District and the Parent discuss whether the Student requires paraeducator support in the forthcoming, required IEP meeting.

Dated this ___ day of January, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, 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.)