

According to the District's special education director, in response to the Parent's request for an augmentative and alternative communication device and an assessment from SETC: "I made the recommendation to use a more local resource...I also explained that SETC timelines can be very challenging and delayed...I explained that my intent was to match devices used at school with the home environment."

The District further stated the following in regard to this issue:

At the meeting District agreed to pursue the "free" services provided by SETC as requested by Parent. I informed the Parent that their services are not "free," devices are on 30 day loan and typically are not the most current. Also, SETC will have a phone conversation with SLP, but any further consultation they charge. Parent disagreed because she was told by someone else that SETC services were free. District agreed to pursue and determine what services were available. District exhausted the "free" accessible services with SETC.

During a phone interview with the OSPI investigator, the Parent stated that, at some point after the September 6, 2018 meeting, the District told her that utilizing SETC would require "too much paperwork."

71. In its investigation of this complaint, OSPI asked the District for clarity on the following language found in the District's meeting notes from September 6, 2018: "Parents will only allow [Student] to attend school when both the teacher and the 1:1 aid are present." In response, the District stated that the Parent made this statement and that the District stated that: "regardless [of whether] the teacher or 1:1 were absent, the Parent need[ed] to send the Student to school and the District [would] provide trained coverage for both...Parent disagreed and expected to be called when this happens and Parent will decide whether or not to send Student to school."

According to the District:

It was the suggestion of the Parent to start Student on a reduced day because Parent felt Student would not be ready to start back after a long break to full day...the Parent's Partnership for Action, Voices for Empowerment (PAVE)¹⁷ representative agreed with the Parent. District agreed to start Student on a half-day placement and then meet again in 20-30 days to review progress.

According to the Parent, during the September 6, 2018 meeting, the Parent provided the District with a copy of the letter from the Student's private medical provider that was dated August 27, 2018. (This letter is quoted in the facts above.)

72. According to the District, "instead of a typed prior written notice [memorializing the decisions made at the September 6, 2018 meeting], the Parent and a PAVE representative requested a copy of the handwritten notes taken by the building principal...these notes are found in the [District's meeting notes]."

¹⁷ According to its website, PAVE is "a parent organization providing support, training and informational resources to empower families and individuals with disabilities." <https://wapave.org/who-we-are/>

The District's response does include a document dated September 6, 2018 that read: "Transcribed prior written notice from handwritten prior written notice requested, copied, and given to parents as per their request at the conclusion of the meeting." This document includes almost the exact same text as that found in the District's meeting notes for the September 6, 2018 meeting. In part, it read:

One of the existing paras...will be the designated aid for [Student] (new para in classroom).
The team will re-visit the plan when [Student] is going full day.

FBA—Parent agrees to have [an FBA conducted]. Two weeks of observation for FBA.

...

Communication devices—[Parent] is fine with anything that helps him communicate...[Parent] wants him to communicate: 'help, I need attention, I need a break, yes, no, I need a drink.'

Use walker at school—try to stop crawling

FBA—[Parent] wants to know what works and what doesn't—she wants a BIP

SETC—[Parent] would like them to come and evaluate [Student]. [The 2018-2019 special education director] will contact [SETC] to get the process started.

73. According to the District, the 2018-2019 special education director contacted SETC at some point in September of 2018, and the special education director received a follow-up email on October 1, 2018.

74. The Student's "Physical Therapy Student Data" log included the following entries for October 2018:

- 10/4/18: [One physical therapy session was completed.]
- 10/11/18: School had a jog-a-thon during scheduled therapy time...requested to try to reschedule therapy.
- 10/18/18: [Student] was...throwing things from the room onto the floor and at walls and white boards...I was not able to give direct therapy to [Student] today due to his negative behaviors, but was able to observe spontaneous movement within the classroom while he was engaged in tantrum behavior.
- 10/25/18: School is having an assembly during scheduled therapy time, no therapy, will attempt to reschedule at a later date.

75. According to the Student's speech log, the Student received three speech therapy sessions in October 2018. Six speech therapy sessions scheduled for October 2018. However, on October 3, 2018, the Student was absent. On October 17 and 19, 2018, the SLP "tried to see [Student], but [Student] was having meltdowns."

The October 2018 entries do not specifically mention the AC devices. Two October 2018 entries do mention that the Student used "signs" on a couple of occasions.

76. In October of 2018, the Student had three excused absences.

77. The record contains an FBA Consent form signed by the Parent, dated October 2, 2018.

78. On October 30, 2018, the Student's evaluation team completed an FBA. There are several things to note about the October 2018 FBA:

- The "Summary of Data Collection" portion states that four sources of data informed the October 2018 FBA: 1) an interview with the Student's special education teacher; 2) a Problem Behavior Questionnaire filled out by both the Student's special education teacher and the Student's primary aide; 3) an interview of the Parent; and 4) classroom observations.
- The target behavior identified in the October 2018 FBA was: "throwing objects at or near others, spitting, and physical aggression towards others primarily seen in the form of hitting, biting, scratching, and pinching."
- The October 2018 FBA set forth numerous strategies.

According to the District, a board certified behavior analyst (BCBA) conducted the October 2018 FBA.

79. On October 31, 2018, the District issued a prior written notice to the Parent. In part, it read:

On 10/30/18, the IEP team met, along with the behavior specialist, to convene a new FBA. It was determined that [Student's] physical aggression is likely due to an attempt to escape the undesired task/environment and gain attention, and his refusal behaviors are likely due to escaping the undesired task/environment. [Student] will stay on partial day placement (from 1:00 p.m.—3:30 p.m.) solely in the Life Skills setting. A new BIP will be put in place along with the new IEP and re-evaluation currently scheduled for November 29, 1018. Waiting until the re-evaluation and IEP due date to create the BIP allows time for the team to take new data on [Student's] behaviors and attempt the behavior specialist's recommendations regarding [Student's] problem behaviors. The new BIP can then be written with known effective strategies. The team agree that [Student] does not seem ready to add time to his day. [Student's] classroom environment is different with new staff this year and he is finding success. A new BIP will appropriately document the new strategies being utilized and ensure school staff is following through with the appropriate protocols to meet [Student's] needs. Although [Student] is finding behavioral success, he still requires an ample amount of support to be successful, and would struggle with additional time to his day.

80. The Student's "Physical Therapy Student Data" log included the following entries for November 2018:

- 11/1/18: [Student] absent.
- 11/5/18: [Memorialization of some communications with the Parent. No indication that a physical therapy session was completed.]
- 11/7/18: [Memorialization of some communications with the Student's special education teacher. No indication that a physical therapy session was completed. Student appears to have been absent.]
- 11/9/18: [Memorialization of some communications with the Parent. No indication that a physical therapy session was completed.]
- 11/15/18: [Student] absent all this week due to half days/mornings for parent teacher conferences.
- 11/19/18: [Student absent].
- 11/26/18: [Physical therapist appears to have conducted some form of reevaluation of the Student. No indication that a physical therapy session was completed.]
- 11/29/18: [Student] absent.

81. According to the Student's speech log, the Student received one speech therapy session in November 2018. Four speech therapy sessions were scheduled for November 2018. The Student, however, was absent on the following dates: November 7, 14, and 21, 2018.

The November 2018 entry does not specifically mention the AC devices. It does mention that the Student worked with magnets of different shapes and colors.

82. In November of 2018, the Student had 15 excused absences.

83. According to the District, in mid-November of 2018, the SLP had a phone conversation with a representative from SETC about the Student and his needs.

84. According to the Parent, on or about November 28, 2018, the Student's bus driver informed her that he had heard the 2018-2019 special education teacher make a negative comment about the Student.

85. On November 29, 2018, the Parent emailed the 2018-2019 special education director, stating, "[Student] will not be attending school until certain safety issues are resolved."

In a phone interview with the OSPI investigator, the 2018-2019 special education director said that he is unaware of what specific "safety issues" the Parent was referencing in her email. The 2018-2019 special education director stated that he believed these "safety issues" were related to a negative comment that the Parent was told the 2018-2019 special education teacher allegedly stated about the Student.

86. The District's response included the following documentation regarding the Student's progress toward his December 2017 (February 2018 Amended) IEP goals:

- Student completed his gross motor goal by May 25, 2018.
- Student made some progress on his two communication goals, but "progress has been difficult to measure due to absences and behavior."
- Student made no progress on the following goals: gross motor standing, fine motor-finger strength and dexterity, adaptive/self-help, cognitive/math readiness, cognitive/reading readiness, and cognitive/writing readiness. The 'Progress Report (Amendment)' states that Student's "frequent absences and behavior...interfered with the [Student's] ability to progress [on his] goals."

87. On November 29, 2018, the District completed a reevaluation of the Student. The November 2018 reevaluation included assessments in the following areas: medical-physical, social/emotional, adaptive, academic, cognitive, communication, occupational therapy, physical therapy. Based on the results of the November 2018 reevaluation, the Student's reevaluation group determined that the Student continued to be eligible for special education under the category of multiple disabilities. The November 2018 reevaluation report recommended that the Student receive specially designed instruction in math, reading, written expression, adaptive/self-help, social/emotional, and communication. The November 2018 reevaluation report recommended that the Student receive related services in occupational therapy and physical therapy.

88. On November 29, 2018, the Student's IEP team created a new annual IEP for the Student. The November 2018 IEP was to be implemented starting November 30, 2018. The November 2018 IEP included annual goals in the areas of reading goals (letter name), writing (tracing), math (number ID), adaptive self-help, social/emotional, communication, occupational therapy, and physical therapy.

The "Present Level of Educational Performance: Communication" section read, in part:

SPEECH PRODUCTION:

[Student] has been working on production of the initial sound /b/ in isolation with a para in the classroom and with the speech therapist. He is able to produce /b/ with a prompt and modeling. His overall intelligibility using verbal speech is 0%. When using the PECS, he pairs verbal production with a prompt and model. [Student] does not have functional verbal speech. His vocalizations are used for getting someone's attention and trying to tell about something. He often uses vocalizations for expression of happiness or anger.

AUGMENTATIVE COMMUNICATION:

Within the classroom [Student] has access to a modified PECS. Pictures are printed on a piece of paper and put on a clipboard. The picture choices are offered to [Student] and he will point to the picture indicating what he is wanting, with a prompt. He has a difficult time grasping a picture card as in traditional PECS. This modification has been working well in the classroom. He does not initiate use of the system, but with a model will make a request. [Student] needs a prompt for him to request. He does sign 'more' and 'all done.' [Student] does not currently use a communication device at home.

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

- Reading—30 minutes 5 times a week (to be provided by special education staff)
- Written expression—20 minutes 5 times a week (to be provided by special education staff)
- Math—30 minutes 5 times a week (to be provided by special education staff)
- Social/emotional—65 minutes 5 times a week (to be provided by special education staff)
- Communication—30 minutes once a week (to be provided by an SLP)
- Adaptive/self-help—65 minutes 5 times a week (to be provided by special education staff)

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

- Occupational therapy—15 minutes 3 times a month (to be provided by OT staff)
- Physical therapy—30 minutes once a week (to be provided by a PT)

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

- One-on-one assistance—180 minutes 5 times a week (to be provided by 1:1 support)

The November 2018 IEP provided the Student with several accommodations.

89. On November 29, 2018, the Student's IEP team created a new BIP for the Student.

90. During a phone interview with the OSPI investigator, the Parent stated that, in either late November or early December 2018, a paraeducator informed her that the Student was, on at

least one occasion, buckled into his wheelchair while he was in the classroom—in other words, not while he was being transported. (The Parent did not feel comfortable disclosing the name of this paraeducator to OSPI’s Special Education Investigator.)

91. The Student’s “Physical Therapy Student Data” log included the following entries for December 2018:

- 12/6/18: [Student] absent.
- 12/10/18: [Student] absent.
- 12/12/18: IEP meeting for [Student].
- 12/13/18: [Student] absent.
- 12/20/18: [Student] absent.

92. According to the Student’s speech log, the Student received zero speech therapy sessions in December 2018. Three speech therapy sessions were scheduled for December 2018, but the Student was absent from school on each of the scheduled days.

93. In December of 2018, the Student had 15 excused absences.

94. According to the Student’s speech log, the Student was scheduled to receive a speech therapy session on January 9, 2019, but the Student was absent from school on that date.

95. In January of 2019, the Student had 18 excused absences.

96. In a phone interview with the OSPI investigator, the 2018-2019 special education director stated that, as of February 20, 2019, the Student has not yet returned to school.

97. According to the Parent, during the 2018-2019 school year, the “Student’s private PT...shared concerns that the District was requiring [Student] to use his wheelchair instead of his walker and that this was probably happening because it was easier for school staff.” According to the Parent, the PT expressed that “as a result of the District’s increased reliance on wheelchair usage, [Student’s] physical mobility had regressed.”¹⁸

98. The District’s response included a statement from paraeducator 4, who worked with the Student during the 2018-2019 school year. It read, in part:

Before the student started attending [school], the teacher and I discussed the behavior plan that was put in place so I was prepared. The teacher and I started creating visuals for the student to use for his everyday communication board. We put together different learning activities for the student to complete throughout his day.

When the student got to school he transitioned off the bus in a large blue wheelchair that was provided by transportation. After entering the classroom in the wheelchair he would transition to

¹⁸ During this investigation, the Parent did not provide clarity on whether this was merely a suspicion of the Student’s private PT, or whether the Student’s private PT had actual knowledge that the District was utilizing the Student’s wheelchair in lieu of the Student’s walker. If it was the latter situation, the Parent did not explain how and/or why the Student’s private PT had this knowledge. The Parent did state that the Student’s private PT had a conversation with the Student’s District PT. According to the Parent, though, in this conversation, the Student’s District PT simply agreed with the Student’s private PT that the Student’s physical mobility had regressed.

his chair at his desk. The wheelchair would be placed in the back of the classroom by our laundry door and his walker would be placed by the desk. There were multiple times when myself or the teacher would have to fix the walker after just getting to school as it was not tightened or unstable making it not safe for the student to use. During the day the student would use the walker to get around the classroom or transition to specials. At the end of the day the student and I would pack up and get ready for the bus. I would assist the student in getting into the blue wheelchair so he could transition onto the bus. The blue wheelchair was also used during the jog-a-thon¹⁹ so the student could participate. There was another instance where we had an assembly at the end of the day and the wheelchair was used due to immediate dismissal.

When the student arrived at school, we would immediately begin to work on the specific goals from his IEP. As we began working, there were times when the student would have different aggressive behaviors. A clicker was used to track the behaviors and the information was recorded on our data sheet at the end of each day. This was discussed with the student's agreed upon by the student's parents [*sic*] during the meeting discussing the student's behavior plan resulting from the functional behavior assessment (FBA).

Sometimes these behaviors were small like crawling away from an unpreferred activity, grunting/loud grunts (his way of yelling), or spitting but often times the behaviors were very intense and would range from hitting, kicking, pinching, biting, ramming the walker into items or people and throwing items at staff and students. The teacher and I would work together to de-escalate and diffuse the situation by following the student's behavior plan. There were multiple times where the students would need to evacuate the classroom with another para for their own safety and the safety of the student. There were also multiple times where the student was unable to attend therapies with the specialists due to his unsafe behaviors. When a specialist would enter the room during a behavior, the teacher or I would present the student with the opportunity to attend, given that his aggressive behaviors stop. The result of not being able to stop the aggression the student would have to miss his session and would try again next time out of concern for the student and specialists safety.

99. According to the District's response:

The [2018-2019] SLP [started] with PECs and hand-over-hand. The SLP, after a phone consult with the Special Education Technology Center, is working on introducing again the AC iPad device for a few picture responses.

100. The District's response included the following information on the use of the wheelchair:

When the wheelchair was in use we used the seat belt harness that is attached to the wheelchair. Any time the Student was in the wheelchair (transportation), the seatbelt was secured for his safety. [In the District's Response,] 'gait trainer' and 'walker' are used interchangeably. The Student was usually sent to school with the orange walker that he used for mobility around the classroom and within the school setting. The Student was never transported in the wheelchair due to behavioral issues. The Student was always calm when put in or taken out of the wheelchair because it was a means of transportation only. The instances of one assembly and the jog-a-thon are the only instances the wheelchair was used other than transportation on and off the buses.

¹⁹ According to the District, the Jog-a-Thon was an annual event at the Student's school.

101. In its investigation of this complaint, OSPI asked the District the following question: "Why was the GoTalk and the Prologuo used during the Student's 2017-2018 speech therapy sessions but not [during] the Student's 2018-2019 sessions? Did the Student's needs change at all?" The 2018-2019 SLP provided the following response to this question:

I was using PECS because it was being used successfully in the classroom. And it was working so I was moving forward with that AAC device. I was working on establishing a relationship with student, and was getting ready to implement other AAC devices at the end of November. His sporadic attendance and behavior made it difficult to try new devices. His lack of motor skills in discretely pointed to objects on a iPad was a challenge. I asked our OT to consult with me on his motor skills which we were working on. Also, I feel that my inexperience with Life Skills students and AAC devices contributed to my hesitation in introducing new AAC devices right away. I am currently enrolled in a workshop in April on AAC devices and one of my classes this summer is on AAC devices.

102. The District has a policy (Policy 3122P), entitled, "Excused and Unexcused Absences." It read, in part: "Unexcused absences occur when: the parent, guardian, or adult student fails to submit any type of excuse statement, whether by phone, e-mail or in writing, for an absence."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the Student's various IEPs have not been properly implemented since December 23, 2017. 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.

In the situation where the student is absent from school because of the family's or physician's decision that the student not attend school, the general rule is: if the school district makes IEP services available to the student at the normally scheduled time, the school district is not obligated to make other arrangements to provide services. In the situation where the student cannot receive the services in his or her IEP due to reasons associated with participation in school-sponsored activities or the unavailability of needed personnel, then the school district generally will be responsible for making alternative arrangements for providing IEP services.

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 usually delivered effectively in less time than if the services were provided in a classroom setting.

December 23, 2017 through January 31, 2018

From December 23, 2017 through January 31, 2018, the Student's December 2017 IEP was in effect.

As concerns the provision of specially designed instruction during this time period, the Student's schedule supports a finding that it was provided—in other words, during this time period, the Student's schedule would have allowed him to have receive the amount of specially designed instruction included in his December 2017 IEP. Additionally, in the District's response, it asserts that it "implemented the Student's IEPs."

Two related service sessions, however, will need to be made-up.

On Monday, January 15, 2018, a physical therapy session was scheduled but did not occur because the District did not have school that day—January 15, 2018 was Martin Luther King Jr. Day; for this date, the physical therapist's log read: "No school." The District, however, did have school for the remainder of the week. Therefore, there were four other days that week during which the Student could have received the fine and gross motor services included in his December 2017 IEP: 10 minutes once a week of fine motor and 20 minutes once a week of gross motor. Therefore, this session will need to be made up.

According to the SLP's log, one regularly-scheduled speech therapy session was canceled in January 2018 because the SLP was in a "meeting." As this means that the session could not be provided to the Student because of staff unavailability, *Blackman* requires this session to be made-up. Therefore, the District will be required to provide the Student with one 30 minute speech therapy session as compensatory education.

February 1, 2018 through mid-to-late April 2018

From February 1, 2018 through mid-to-late April of 2018, the Student was enrolled full time at the District. During this time period, the Student's February 2018 Amended IEP was in effect.

As concerns the provision of specially designed instruction during this time period, the Student's schedule supports a finding that it was provided—in other words, during this time period, the Student's schedule would have allowed him to have receive the amount of specially designed instruction included in his February 2018 Amended IEP. Additionally, in the District's response, it asserts that it "implemented the Student's IEPs."

However, one physical therapy session from this time period will need to be made up.

On Monday, February 19, 2018, a physical therapy session was scheduled but did not occur because the District did not have school that day—February 19, 2018 was President's Day; for this date, the physical therapist's log read: "No school." The District, however, did have school for the remainder of the week. Therefore, there were four other days that week during which the Student could have received the fine and gross motor services included in his December 2017 IEP: 10 minutes once a week of fine motor and 20 minutes once a week of gross motor. Therefore, this session will need to be made up.

On March 26, 2018, the District created a BIP for the Student. The record shows that, from March 26, 2018 through mid-to-late April of 2018, the District implemented the Student's BIP. As but one example, on March 30, 2018, on multiple occasions, the Student exhibited the target behavior identified in his March 2018 BIP. In response, the 2017-2018 special education teacher utilized three different strategies, each of which was mentioned in the Student's March 2018 BIP. Therefore, OSPI concludes that the Student's March 2018 BIP was implemented during this time period.

Mid-to-late April 2018 through May 10, 2018

From mid-to-late April 2018 through May 10, 2018, the District considered the Student to be "homeschooled." During this time period, the Student's February 2018 Amended IEP was in effect. The Student did not receive any specially designed instruction or related service therapy services during this time period. The Parent and the District strongly disagree with one another on how and why the Student came to be considered "homeschooled" during this time period. The District stated that the Parent informed the District that she would be homeschooling the Student. The Parent stated that she never stated that she would be homeschooling the Student; the Parent stated that any reference she made to homeschooling was misconstrued by the District. As there is no evidence that the Student was withdrawn from the District, the Student remained entitled to FAPE and compensatory education is warranted.

From mid-to-late April 2018 through May 10, 2018, there were approximately three weeks of school. Therefore, the District will be required to provide the Student with approximately one-half of the specially designed instruction that he should have received, but missed, during this time period. The calculations for those figures are as follows:

- Adaptive self-help—45 minutes 5 times a week (to be provided by special education staff)
 - 45 minutes x 5 times a week = 225 minutes of adaptive self-help per week.
 - 225 minutes x 3 weeks = 675 total minutes of adaptive self-help missed.
 - 675 minutes divided by 2 = **(approximately) 360 minutes (or 6 hours) of required compensatory education in adaptive self-help**
- Cognitive reading readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive reading readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of adaptive self-help missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive reading readiness**
- Cognitive math readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive math readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of cognitive math readiness missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive math readiness**
- Cognitive writing readiness—25 minutes 5 times a week (to be provided by special education staff)
 - 25 minutes x 5 times a week = 125 minutes of cognitive writing readiness per week.
 - 125 minutes x 3 weeks = 375 total minutes of cognitive writing readiness missed.
 - 375 minutes divided by 2 = **(approximately) 180 minutes (or 3 hours) of required compensatory education in cognitive writing readiness**

As the Student did not receive any physical or speech therapy during these approximately three weeks of school, the District will be required to provide the Student with the following compensatory education in these areas:

- Three 10 minute sessions of fine motor (to be provided by a PT)
- Three 20 minute sessions of gross motor (to be provided by a PT)
- Three 30 minute communication sessions (to be provided by an SLP)

May 11, 2018 through June 8, 2018

From May 11, 2018 through June 8, 2018, the District considered the Student to be on a "homebound placement." During this time period, the Student's February 2018 Amended IEP was in effect. Both parties agree, though, that, starting on or about June 1, 2018, the Student's family went on a camping trip. Therefore, the Student was not available to receive specially designed instruction or therapy services during the last week of school—the 2017-2018 school year ended on June 8, 2018.

However, the District concedes that the Student did not receive any specially designed instruction from May 11, 2018 through June 1, 2018. This constitutes roughly three weeks of school. Therefore, the District will be required to provide the Student with approximately one-half of the specially designed instruction that he should have received, but missed, during this time period. The calculations for those figures are as follows:

- Adaptive self-help—45 minutes 5 times a week (to be provided by special education staff)
 - 45 minutes x 5 times a week = 225 minutes of adaptive self-help per week.
 - 225 minutes x 3 weeks = 675 total minutes of adaptive self-help missed.
 - 675 minutes divided by 2 = **(approximately) 360 minutes (or 6 hours) of required compensatory education in adaptive self-help**
- Cognitive reading readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive reading readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of adaptive self-help missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive reading readiness**
- Cognitive math readiness—30 minutes 5 times a week (to be provided by special education staff)
 - 30 minutes x 5 times a week = 150 minutes of cognitive math readiness per week.
 - 150 minutes x 3 weeks = 450 total minutes of cognitive math readiness missed.
 - 450 minutes divided by 2 = **(approximately) 240 minutes (or 4 hours) of required compensatory education in cognitive math readiness**
- Cognitive writing readiness—25 minutes 5 times a week (to be provided by special education staff)
 - 25 minutes x 5 times a week = 125 minutes of cognitive writing readiness per week.
 - 125 minutes x 3 weeks = 375 total minutes of cognitive writing readiness missed.
 - 375 minutes divided by 2 = **(approximately) 180 minutes (or 3 hours) of required compensatory education in cognitive writing readiness**

In regards to the provision of related service therapy sessions during this time period, the record shows that the Student received two speech sessions and two physical therapy sessions. As this time period covered approximately three weeks of school, the Student should have received one

additional session in both speech and physical therapy. Therefore, the District will be required to provide the Student with the following compensatory therapy services to cover this time period:

- One 10 minute session of fine motor (to be provided by a PT)
- One 20 minute session of gross motor (to be provided by a PT)
- One 30 minute communication session (to be provided by an SLP)

August 29, 2018 through November 29, 2018

As a preliminary matter, OSPI also notes that the Student remained on a half-day placement at the beginning of the 2018-2019 school year. The Student's February 2018 Amended IEP, though, stated that the Student would be on a full-day placement starting August 29, 2018. The District informed OSPI that the Student's February 2018 Amended IEP was never amended or revised to reflect the fact that the Student remained on a half-day placement at the beginning of the 2018-2019 school year. Under the IDEA, this is impermissible. IEPs must either be implemented as written, or they must be amended and revised to accurately reflect the services the student actually requires and which the student will be provided. As a result, select District staff will be required to attend training on these requirements.

Assuming that the half-day specially designed instruction and therapy times from the Student's February 2018 Amended IEP were what he was supposed to be receiving from August 29, 2018 through November 29, 2018, the Student's schedule supports a finding that they were provided. Additionally, the District asserts that it "implemented the Student's IEPs."

The District will be required to provide the Student with the following compensatory sessions in physical therapy and communication to cover this time period:

- September
 - Three physical therapy sessions
 - Reason: there were approximately 4 weeks of school in September 2018. The PT's log includes one entry: "9/27/18: [Student] was assigned to my caseload on Monday, September 24, 2018. Went to school to see [Student], teacher reports that he is absent today."
 - Three speech therapy sessions
 - Reason: there were approximately 4 weeks of school in September 2018. The SLP's log states: a) she conducted an observation of the Student on September 21, 2018—in other words, she did not provide the student with any speech therapy on that day; and b) the Student was absent on September 28, 2018. The SLP's log contains no other entries for September 2018.
- October
 - Two physical therapy sessions.
 - Reason: On October 11 and 15, 2018, the PT was not able to provide the Student with his physical therapy sessions because of scheduled school events (the Jog-a-Thon fundraiser and an assembly). Under *Blackman*, the District needs to make these up.

November 30, 2018 through January 2019

On November 29, 2018, the Student's IEP team developed a new IEP for the Student. However, that same day, the Parent emailed the 2018-2019 special education director, stating: "[Student] will not be attending school until certain safety issues are resolved." Based on the Student's attendance record, it does appear that the Parent kept the Student out of school during the months of December 2018 and January 2019. For example, in December 2018, the Student had 15 absences. In January 2019, the Student had 18 absences. From the record, it does not appear that the Student received any physical therapy session in December 2018. (The PT's log does not include any information for January 2019.) It also does not appear that the Student received any communication therapy sessions in either December 2018 or January 2019, due to the absences.

Paraeducator Support

There are two issues with the implementation of the paraeducator support sections of the Student's various IEPs.

First, during the time period under investigation, the Student was supposed to receive 45 minutes 5 times a week of "one-on-one assistance." (This provision is included in both the Student's December 2017 IEP and his February 2018 Amended IEP.) The District, however, states that the Student actually received more paraeducator support than this; according to the District, the Student received 150 minutes a day of "1:1 support in the classroom." Under the IDEA, this is impermissible. As stated earlier, IEPs must either be implemented as written, or they must be amended and revised to accurately reflect the services the student actually requires and which that student will be provided. Furthermore, OSPI notes that the Student's November 2018 IEP states the Student will be provided with 180 minutes a day of one-on-one assistance. Given the confusion on this issue, the District and the Parent will be required to hold an IEP meeting to determine exactly how much one-to-one assistance the Student requires each day.

Second, the Parent and the District appear to have different understandings of what the Student's IEPs mean by the phrase "one-on-one assistance" and "1:1 support." The Parent appears to believe that this does *not* mean that the Student has been assigned a specific paraeducator—in other words, that one specific individual will be assigned exclusively to the Student for his one-to-one assistance. At least as of the 2018-2019 school year, however, this is exactly what the District says was provided to the Student. The District states that, for the 2018-2019 school year, paraeducator 4 was assigned to be the exclusive individual that would provide the Student with his one-on-one assistance. Therefore, the District will issue the Parent a prior written notice explaining this fact to the Parent. The District will also explain this fact to the Student at the IEP meeting where the proper total of one-to-one minutes will be discussed.

Additional IEP Implementation Issues

There are two other issues concerning IEP implementation.

First, the Parent alleged that there were instances where the Student was deprived of physical therapy and speech language therapy, both of which were included in the Student's pertinent IEPs, as a punishment for "misbehaving" in class. The District denies that this ever happened. For

example, four District staff members stated that the Student was only prevented from attending a physical therapy or speech therapy session on those occasions when his behavior made it unsafe for both him and the service provider.

However, the record does show that, on at least one occasion, the Student was denied a physical therapy session because a staff member thought that, if the Student was provided with that session, then the Student would be being “rewarded” for his behavioral challenges. For example, the 2017-2018 special education teacher stated: “I...remember on at least one occasion the [physical therapist] mentioning that she was not going to see [Student] that day because [Student] loved going with her and she felt [that if she allowed the Student to go with her] he would think he was being rewarded.” In other words, on this occasion, the District did not follow the procedures for suspending the Student for violating a code of student conduct, as outlined in WACs 392-172A-05145 through -05175. Rather, the District opted to prevent the Student from accessing a portion of his IEP services in an effort to encourage him to demonstrate better behavior. (The record also suggests, quite strongly, that this behavior was the result of the Student’s disability.) This is impermissible under the IDEA.

Importantly, by definition, a behavioral intervention plan (BIP) cannot utilize the following strategy: depriving a student access to services listed in his or her IEP in an attempt to get that student to demonstrate more appropriate behaviors; in fact, a student’s BIP must include positive behavioral interventions and supports that help that student better access the services listed in his or her IEP. *See, for example*, WAC 392-172A-01031(3)(a) (“The [BIP must], at a minimum, describe: the positive behavioral interventions and supports to reduce the pattern of behavior that impedes the student’s learning”). The compensatory education in physical therapy that is required by the above sections of this decision will also account for this particular instance in which the IDEA was not followed.

Second, the District is reminded that Washington general law requires the District to convene an IEP team meeting when a student eligible for special education has three unexcused absences in a month, and to include a behavior specialist or mental health specialist in the meeting where appropriate, to consider the reasons for the absences. Additionally, when a student eligible for special education has between two and five unexcused absences, the District must take data-informed steps to eliminate or reduce the child’s absences.

Here, the Student was often absent from school during the time period under investigation. The District characterized each of these absences as “excused.” However, it appears that some of these absences were not properly categorized. For example, under its own absence policy, if the parent or guardian of a student does not provide the District with an explanation of why that student will be absent on a particular day, that absence is supposed to be characterized as “unexcused.”²⁰ According to the District’s “Attendance Record” for the Student, though, there were numerous “excused absences” that contained the following comment: “no reason given [by Parent].” As a non-exhaustive example, the entries for the following dates on the Student’s

²⁰ This policy (Policy 3122P) appears to be in general conformity with

"Attendance Record" include the foregoing comment: February 28, 2018, April 9-11, 16, 2018. In light of this fact, the District is reminded of its responsibilities under RCW 28A.225.020 when a student eligible for special education has repeated unexcused absences.

Issue 2: District's Response to Parent's Requests for FBAs – The Parent alleged that the District did not properly respond to her requests that an FBA be conducted for the Student. An FBA focuses on identifying the function or purpose behind a child's behavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations.

An FBA is generally understood to be an individualized evaluation of a child in accordance with WACs 392-172A-03005 through -03040. A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of a student warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. Once the need for an FBA is identified, a district must act without undue delay and within a reasonable period of time; and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE.

A district must issue a parent a prior written notice when a decision has been made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why it proposes or refuses to initiate that particular action. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must describe any other options the district considered, and it must explain its reasons for rejecting those options.

In developing, reviewing, and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's

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

March 2018 FBA

According to the Parent, on October 16, 2017, during a phone conversation with a District staff member, she requested that an FBA be completed for the Student. While the initial request occurred prior to the complaint investigation timeline, the District possessed information indicating that the Student was exhibiting a pattern of behaviors that likely warranted an FBA by the time the complaint investigation timeline began on December 25, 2017: the Student experienced significant behavioral regression beginning in late October of 2017 and continuing through at least the end of January 2018. For example, during this time period, the Student exhibited one of the following behaviors on at least 58 occasions: throwing, flopping/laying down, hitting/kicking—which the March 2018 FBA itself later cites as evidence for why an FBA was necessary. The District does not appear to have systematically gathered information on the Student's behavior in January and February of 2018. However, two portions of the record strongly suggest that the Student's behavior continued to worsen during this time period: a) two entries in the PT's log for January 2018 refer to the Student struggling with behavior; and b) the February 1, 2019 prior written notice reads, in part, "[Student's] behaviors have been increasing at school." Under these circumstances (a parental request in October of 2017 for an FBA²¹ and data showing a behavioral regression throughout the fall and early spring), it was unreasonable for the District to wait until January 27, 2018 to obtain signed consent from the Parent to conduct an FBA.

Furthermore, the District did not conduct the FBA within 35 school days of obtaining the Parent's consent. The Parent signed consent for the FBA on January 27, 2018. According to the District's calendar, 35 school days from January 27, 2018 is March 19, 2018. The District, however, did not complete the FBA until March 26, 2018.

Given the above, the District failed to follow procedures for conducting a timely FBA and will be required to conduct training.

As a final note, the District did provide evidence that District staff utilized positive behavioral interventions between December 23, 2017 (the start date of this investigation) and March 26, 2018 (the date an FBA was completed). For example, in response to a question from OSPI concerning certain language in the PT's January 2018 service log, the 2017-2018 special education teacher stated, in part: "Myself and the [educational staff associate] that was always there to help me did everything we could to get him calmed down...we learned that [Student] loved to have his teeth and hair brushed and [we] would brush his teeth or hair as a strategy to keep him calm." Additionally, paraeducator 2, who worked with the Student during the 2017-2018 school year,

²¹ OSPI does note that WAC 392-172A-03005(1) states that a request for an evaluation, including an FBA, should be in writing, and that the Parent's request in October of 2017 appears to have been made verbally.

stated that District staff would “try to de-escalate the situation...we would clear the classroom...and try to resume regular daily learning activities until the student’s unsafe behavior subsided.”²² Therefore, while it appears that the District did make appropriate use of positive behavioral interventions during this time period, OSPI reminds the District that positive behavioral interventions may be utilized, and indeed are required to be utilized (when necessary), even before an FBA is completed. OSPI recommends that any systematic use of positive behavioral interventions for a student be reflected in that student’s IEP.

October 2018 FBA

On September 6, 2018, during an IEP meeting, the Parent requested that a new FBA be completed for the Student. The District agreed to this request; the District’s meeting notes for the September 6, 2018 meeting stated, in part: “Parent agrees to have [a board certified behavior analyst] do the FBA. The FBA will consist of 2 weeks of observation.” On September 6, 2018, the District provided the Parent and the Parent’s PAVE representative a copy of the meeting notes; it was the District’s understanding that the copy of the meeting notes would serve as the prior written notice regarding the decisions made at the September 6, 2018 meeting. (Generally speaking, this is permissible. So long as a prior written notice contains all of the elements required by WAC 392-172A-05010, it does not need to be in any particular form—for example, districts are not required to use the IEP Online format for prior written notices.) Then, on October 2, 2018, the District obtained signed consent from the Parent for the District to conduct an FBA. October 2, 2018 is roughly 3 ½ weeks after the date that the Parent and the District both agreed that a new FBA needed to be completed (September 6, 2018). While this timeframe is permissible, it is not best practice. OSPI recommends that, in the event that a district and a parent both agree that an FBA needs to be conducted for a student, that the district make a good faith effort to obtain signed consent from the parent as soon as reasonably possible, given the unique disability-related needs of the student.

On October 31, 2018, the Student’s evaluation team completed an FBA of the Student. This falls within 35 school days from when signed parental consent was obtained by the District. However, the October 31, 2018 prior written notice does include some peculiar language: “Waiting until the re-evaluation and IEP due date [of November 29, 2018] to create the BIP allows time for the team to take new data on [Student’s] behavior,” which could indicate that the FBA was not actually complete. OSPI notes that the purpose of an FBA is to gather information on the function or purpose of a student’s behavior. OSPI recommends that a student’s evaluation team not consider an FBA complete if that student’s evaluation team believes that it still lacks information necessary to: a) properly understand the student’s behavior; and b) develop an appropriate BIP for that student.

On November 29, 2018, the District completed a BIP for the Student. This is 18 school days after the FBA was completed. Here, the District substantiated that it properly conducted an FBA and developed a BIP. OSPI finds no violation.

²² Paraeducator 2 did not provide a specific date (or date range) for this recollection.

As a final note, the District did provide evidence that District staff utilized positive behavioral interventions between October 31, 2018 (the date a new FBA was created for the Student) and November 29, 2018 (the date a new BIP was created for the Student). For example, paraeducator 4, who worked with the Student during the 2018-2019 school year, stated:

Before the student started attending [school], the teacher and I discussed the behavior plan that was put in place so I was prepared. The teacher and I started creating visuals for the student to use for his everyday communication board...[whenever the Student was exhibiting behavioral challenges,] the teacher and I would work together to de-escalate and diffuse the situation by following the student's behavior plan. There were multiple times where the students would need to evacuate the classroom with another para for their own safety and the safety of the student.²³

Therefore, while it appears that the District did make appropriate use of positive behavioral interventions during this time period, OSPI reminds the District that positive behavioral interventions may be utilized, and indeed are required to be utilized (when necessary), even before an FBA is completed. Furthermore, OSPI recommends that any systematic use of positive behavioral interventions for a student be reflected in that student's IEP.

Issue 3: Placement Procedures – The Parent alleged that the District did not follow proper placement procedures for determining that the Student should be put in a half-day placement during both the 2017-2018 and the 2018-2019 school year.

Students eligible for special education should attend school for the same amount of time as students without disabilities, unless the IEP team decides that a shortened school day is necessary to ensure access to FAPE.

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 WAC 392-172A-02070; the placement option(s) 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 the student needs, based on the student's IEP and LRE requirements.

Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students.

²³ Paraeducator 4 did not provide a specific date (or date range) for this recollection. Given the content of this recollection, it is possible that this recollection only pertains to events that occurred from August 29, 2018 (the first day of the 2018-2019 school year) through October 31, 2018 (the date a new FBA was created for the Student). It is also possible that certain District staff continued to implement the Student's March 2018 BIP beyond October 31, 2018. On this point, it is important to note that, on multiple occasions during the course of this investigation, OSPI asked the District: "What positive behavioral interventions, if any, did District staff provide to the Student between October 31, 2018...and November 29, 2018?" OSPI did not receive any response to this question from the District.

Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. The school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3). School members of the team may come to the table with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.

February 1, 2018 Half-Day Placement

Here, the record is not clear on some of the factual occurrences surrounding the February 1, 2018 decision to provide the Student with a half-day placement. For example, the District states that a private counselor, invited by the Parent, attended the meeting. The Parent states that a private counselor did not attend the meeting. The District states that the private counselor and the Parent requested the half-day placement. The Parent states that neither herself nor the private counselor requested a half-day placement; the Parent admits that she was concerned "that the classroom didn't have enough supports for the staff...working with [Student]," but that, essentially, the District unilaterally informed her that the Student would be put on a half-day placement. It is difficult for OSPI to weigh in on these areas of the record. However, there is enough in the record for OSPI to note the following as concerns the February 1, 2018 decision to place the Student in a half-day placement:

First, it was premature. A placement decision must be based on the Student's needs, as documented by relevant, accurate data. Here, the Student was put in a half-day placement because his "behaviors [had] been increasing at school." However, as of February 1, 2018, the Student's IEP team had not made a systematic effort to uncover: a) why those behaviors were increasing; and b) if there was anything District staff could do, short of a shortened school day, to address those behaviors. For example, as of February 1, 2018, the Student's evaluation team had not conducted an FBA—this would not be completed until March 26, 2018. In fact, placing a student on a half-day placement without first conducting an FBA and implementing a BIP is in contradiction of the District's own policy: the District's 'Partial Day Placement' reads, in part: "The student must have an FBA/BIP that addresses the need for the partial day with supporting data of prior implementations."²⁴ This policy is in line with the requirements of the IDEA.

Second, because of FAPE and LRE requirements, it was improper for the District to not implement a plan to slowly return the Student to a full-day placement—or, at the very least, to re-visit the half-day placement decision at a date shortly after February 1, 2018. By way of illustration, the

²⁴ The District's 'Partial Day Placement' policy also states that, before a student can be put in a half-day placement, the student's IEP team must produce "documentation that an increase in special services has been attempted to address the needs and a more restrictive setting [has been] considered in the current setting/building." This portion of the District's policy also appears to be in line with the IDEA on this issue. OSPI further notes that the Student's February 2018 Amended IEP did not provide the Student with any specially designed instruction in the area of social/emotional. Perhaps, if the Student's IEP team had added specially designed instruction in social/emotional to his IEP, this would have obviated the necessity of a half-day placement.

February 1, 2018 prior written notice reads, in part: “[Student’s] services need to be adjusted to reflect his 1/2 day placement for the rest of the 2017-2018 school year” (emphasis added). (The last day of the District’s 2017-2018 school year was not till June 8, 2018.) Again, the decision to put the Student on a half-day placement, with no plan for returning the Student to a full-day placement, represents a violation of the District’s own policy. For example, in response to a question from the OSPI investigator, the District provided the following answer:

[The District] does have a policy in place for any student on an IEP that is on a partial day...the District expectation for students on a partial day is that a BIP must be in place and the plan reviewed at regular intervals (usually every 30 days) to monitor progress. The IEP team would then decide the direction of the placement (same, more time, less time) based on the data and input from the team.

In this instance, this policy does not appear to have been followed. While district policy provides additional protections to students with disabilities, it is clear that the IEP team did not consider the entirety of the student needs when it placed him on a half-day schedule, without considering and rejecting other less restrictive options. This is a violation of the IDEA and a training on placement procedures will be required.

September 6, 2018 Half-Day Placement

The record does not include a lot of information on the September 6, 2018 decision to continue the Student on a half-day placement. For example, on this issue, the District’s response stated:

It was the suggestion of the Parent to start Student on a reduced day because Parent felt Student would not be ready to start back after a long break to full day...the Parent’s PAVE representative agreed with the Parent. District agreed to start Student on a half-day placement and then meet again in 20-30 days.

While it was correct for the District to consider and document the Parent’s opinion on the matter, there is no evidence that the other considerations that are required when determining placement were adequately discussed and documented. Those are: the student’s IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through WAC 392-172A-02070; the placement option(s) 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 the student needs, based on the student’s IEP and LRE requirements. For example, the District should have considered the following questions in making the placement determination for the beginning of the 2018-2019 school year:

- Why did the Parent think that the Student could not handle a full day placement at the beginning of the 2018-2019 school year? In other words, what had the Parent noted about the Student’s behavior throughout the summer of 2018 that made her think he would not be able to handle a full day of school?
- Did District staff have any information relating to the Student’s behavior from the latter half of the 2017-2018 school year?
- Were there other strategies that the District could utilize to make a half-day placement unnecessary?
 - Were there other modifications or accommodations that the Student could be provided with that would make a half-day placement unnecessary?

the provision of a free appropriate public education. It must describe any other options the district considered, and it must explain its reasons for rejecting those options.

2017-2018 School Year

The Parent stated that one of her concerns was, while "augmentative devices may have been used in the [Student's] speech language sessions, [they were not] carried over to the classroom." The Parent states that she expressed this concern to the District at some point during the 2017-2018 school year. The Parent did not inform OSPI of the specific date (or dates) that she expressed this concern to the District. The District stated that the Parent did not make a specific request for an AC device at any point during the 2017-2018 school year. The record does show that at least three devices were used during the Student's speech language therapy sessions during the 2017-2018 school year: PECS, prologuo, and GoTalk.

The aforementioned facts comprise the totality of the information provided to OSPI concerning both requests for, and the usage of, AC devices during the 2017-2018 school year. Given the evidence, the District did not fail to respond to the Parent's requests and the Student used an AC device during his speech therapy sessions. No violation is found.

2018-2019 School Year

In several regards, the record is not clear as it concerns parental request (or requests) concerning the use of AC devices in the education of the Student during the 2018-2019 school year. However, OSPI notes that this record leaves several important questions unanswered:

- Why did the Parent request an assessment from SETC on September 6, 2018?
 - Did the Parent believe that the Student's needs had changed over the preceding several months?
 - Did the Parent believe that the "Communication" section of the Student's December 2015 evaluation was outdated?
 - Did the Parent believe that the communication services being provided to the Student under his February 2018 Amended IEP were insufficient or inappropriate?
- Why did the Parent request an SETC iPad for the Student if the Student already had access to an iPad in his classroom?
- What exactly did the District agree to in regard to consulting with SETC at the September 6, 2018 meeting?
 - Did the District only agree to pursue one free consultation with SETC? Or was the agreement more open-ended? (OSPI notes that the District's response stated, in part: "District agreed to pursue and determine what services were available [through] SETC." The September 6, 2018 prior written notice reads, in part: "[The 2018-2019 special education director] will contact [SETC] to get the process started." These portions of the record make it seem as if the District agreed to a more open-ended exploration of a relationship with SETC.)
- What did the District members of the Student's IEP team think of the Parent's SETC-related request?
 - Did they think it was warranted? Why or why not?

- What was the substance of the email that the 2018-2019 special education director received from SETC on October 1, 2018?²⁷
- What was the result of the phone conversation that the SLP had with the SETC representative in mid-November of 2018?
 - Did SETC provide the SLP with any additional and/or new strategies, interventions, or supports to use with the Student? If so, what were they? Were they adopted? If so, when?
- What communication, if any, did the District have with the Parent regarding her SETC-related request after the September 6, 2018 meeting?

The only violation that OSPI finds on this issue is as follows: as least in so far as it relates to the Parent's request for an augmentative communication device, the September 6, 2018 prior written notice is insufficient. A prior written notice clarifies that a decision has been made. A prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why it proposes or refuses to initiate that particular action. OSPI will require a training on the requirements of prior written notice.

As the District and the Parent will hold an IEP meeting, OSPI recommends that they discuss the need for AAC. The Parent is encouraged to contact PAVE to see if a representative can attend the meeting with her. Both parties are encouraged to consider holding a facilitated IEP meeting through Sound Options.

Finally, OSPI notes its concern with the following language in the District's response: "At the meeting District agreed to pursue the 'free' services provided by SETC...SETC will have a phone conversation with [our] SLP, but any further consultation they charge...District exhausted the 'free' accessible services with SETC." OSPI reminds the District that, if it is determined that a particular evaluation or service is necessary for a student eligible for special education to access an appropriate public education, that evaluation or service must be provided to the student at no cost to that student's parent(s).

CORRECTIVE ACTIONS

By or before **March 14, 2019, March 15, 2019, March 18, 2019, March 22, 2019, March 29, 2019, April 5, 2019, April 29, 2019, June 7, 2019,** and **September 13, 2019,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **March 15, 2019,** the District will work with the Parent to develop a schedule to provide the Student with the following compensatory education:
 - a) 12 hours of adaptive self-help

²⁷ OSPI notes that this email falls within the category of "all emails relevant to the issues in this investigation," which, at the outset of this investigation, OSPI requested that the District produce. OSPI further notes that, on multiple occasions throughout the course of this investigation, the investigator requested that the District produce all emails relevant to the issues in this complaint. Upon knowledge and belief, based on some of the District's responses to, and communications with, OSPI during this investigation, other relevant emails exist that were not produced to OSPI during the course of the investigation.

- b) 8 hours of cognitive reading readiness
- c) 8 hours of cognitive math readiness
- d) 6 hours of cognitive writing readiness
- e) 110 minutes of fine motor (to be provided by a PT)
- f) 220 minutes of gross motor (to be provided by a PT)
- g) 4 hours of communication (to be provided by an SLP)

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 service provider. 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 13, 2019, regardless of any need to reschedule.** The District will provide OSPI with documentation of the schedule by **March 18, 2019.**

The District will be required to provide OSPI with periodic progress reports on the provision of compensatory education to the Student: on **April 29, 2019** and **June 7, 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 13, 2019,** the District shall provide OSPI with documentation that all of 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 13, 2019.**

2. By **March 15, 2019,** the District and the Parent will hold an IEP team meeting. At this meeting, the following issues will be discussed:
 - a) Whether a half-day placement is appropriate for the Student.
 - i) Before the required IEP meeting, the District members of the Student’s IEP team will review the following portion of OSPI’s February 2018 Monthly Update: ‘Shortened School Day.’ (<http://www.k12.wa.us/SpecialEd/monthlyupdates/Feb2018Updates.pdf>) By or before **March 14, 2019,** the District will certify that the District members of the Student’s IEP team have reviewed the ‘Shortened School Day’ portion of OSPI’s February 2018 Monthly Update.

- ii) The prior written notice that the District issues to the Parent after the meeting will clearly and thoroughly document that—in regards to the decision on whether a half-day placement is appropriate for the Student—each of the considerations required by WAC 392-172A-02060(2) were discussed.
 - iii) If the decision is made to continue the Student on a half-day placement, the Student’s IEP team will either: a) decide when (in the relatively near future) the placement decision will be revisited; or b) develop a plan to continually monitor the appropriateness of the half-day placement. This decision will also be reflected in the prior written notice issued to the Parent after the meeting.
- b) The appropriate amount of time that the Student requires for the following supplementary aid and service: one-on-one assistance.
- i) At the IEP meeting, the District will inform the Parent that the Student will be provided with a designated paraeducator—in other words, only one specific individual will provide the Student with his one-to-one assistance. (During the course of this investigation, the District informed OSPI that paraeducator 4 was assigned to be the exclusive individual that would provide the Student with his one-to-one assistance.) This fact will also be reflected in the prior written notice that the District issues to the Parent after the meeting.

OSPI encourages the Parent to contact PAVE to see if a representative can attend the meeting with her. Both the Parent and the District are encouraged to consider holding a facilitated IEP meeting through Sound Options.

By **March 22, 2019**, the District will: 1) create a new IEP and/or BIP for the Student that reflects any changes resulting from this meeting; 2) provide the Parent with a copy of the Student’s new IEP and/or BIP; and, 3) provide the Parent with a prior written notice that explains: the decisions that were made (and the reasons those decisions were made).

By **March 22, 2019**, the District will provide OSPI with 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the new IEP (and, if applicable, a copy of the new BIP); 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 the District has provided the Parent with a copy of the new IEP (and, if applicable, new BIP); 7) proof that all District staff members responsible for implementation of the new IEP (and, possibly, the new BIP) have received a copy of the same; and 8) a copy of any other relevant documentation.

DISTRICT SPECIFIC:

1. By **March 29, 2019**, the District will provide training to all special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2017-2018 and 2018-2019 school years. The training will cover the following topics:
 - WAC 392-172A-03105(2)(b) (IEPs must be implemented as written)

- WAC 392-172A-03110 (Development, review, and revision of the IEP)
- WAC 392-172A-03015(1)(a) (A reevaluation must be conducted when a district determines that the educational or related service needs, including improved academic achievement and functional performance, of the student warrant a reevaluation)
- WAC 392-172A-03015(3)(a) (A reevaluation must be completed within 35 school days after the date written consent for an evaluation has been provided to the school district by the parent)
- WAC 392-172A-02060 (Placement procedures)
- WAC 392-172A-05010 (Prior written notice and contents)

The training will include examples. The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 171 staff in the creation of the training materials.

By or before **March 15, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **March 22, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 27, 2019 and additional dates for review, if needed.

By **March 29, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **April 5, 2019**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ____ day of February, 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.)