

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-26

PROCEDURAL HISTORY

On March 6, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the West Valley School District No. 363 (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 8, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 9, 2022, OSPI received additional information from the Parent, which was forwarded to the District on March 10, 2022.

On March 25, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on March 29, 2022. OSPI invited the Parent to reply.

On April 4, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On April 9, 2022, the OSPI complaint investigator interviewed the Parent.

On April 14, 18, and 19, 2022, the OSPI complaint investigator conducted interviews with District staff, including the special services director, a school psychologist, a special education case manager, the assistant principal, and two teachers (the history teacher and language arts teacher).¹

On April 18, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on that same day. OSPI forwarded the information to the Parent on April 19, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on March 7, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

¹ OSPI requested to interview but was unable to interview to interview the case manager and math teacher who were out on leave.

ISSUE

1. During the 2021–2022 school year, did the District materially implement the Student’s individualized education program (IEP)?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Transfer of Educational Records: The new school district in which the student enrolled must take reasonable steps to promptly obtain the student’s records, including any documents related to the provision of special education services, from the student’s previous school district. The student’s previous school district must take reasonable steps to promptly respond to the request from the new school district. The school district that previously served a student is required to transmit information about the student within two school days of receiving the request. If the records are not sent at the same time the information is transmitted, the records should be transmitted as soon as possible. 34 CFR §300.323; WAC 392-172A-03105.

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

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis

for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit the student to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. Hendrick Hudson District Board of Education v. Rowley, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when the student receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

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

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

FINDINGS OF FACT

Background

1. Prior to the start of the 2021–2022 school year, the Student was determined to be eligible for special education services under the category of autism. An individualized education program (IEP) was developed in another district on May 5, 2021, to be implemented through May 4, 2022. The Student was also due for reevaluation on May 15, 2022.

2. The Student’s May 2021 IEP from the prior district noted areas of difficulty as: Personal social behavior, reading, written expression, and math. The IEP had the following four measurable annual goals:
 - Reading: “When reading a passage, [the Student] can answer comprehension questions improving from a mean accuracy of 40% to 80% as measured by Teacher data probes.”
 - Writing: “Across three writing samples, [the Student] will accurately use internal punctuation such as periods, commas, apostrophe and quotation marks improving from a mean of 40% to 80% accuracy as measured by Teacher data probes.”
 - Math: “Given 20 two-digit multiplication facts, [the Student] will find the product with improving from a mean accuracy of 50% to 80% as measured by Teacher data probes.”
 - Behavior: “When given an undesirable task or when frustrated, [the Student] will self-regulate his emotions by using coping skills (such as advocating for a break, breathing techniques, disengaging from an argument, doodling in a personal notebook vs. on his class assignments), improving from 1 out of 5 opportunities to 4 out of 5 opportunities.”

The Student’s IEP called for 1,300 minutes per week of instructional time to include 300 minutes per week in a special education setting and 76.9% of his time in a general education setting. With respect to special education services (specially designed instruction), the Student’s IEP from the prior district identified the following:

Service	Frequency	Location	Staff Delivering Service
Behavior	300 Minutes per Week	Special Education	TchrHSSpecial Ed BI ²
Math	260 Minutes per Week	General Education	TchrHSSpecial Ed BI
Writing	130 Minutes per Week	General Education	TchrHSSpecial Ed BI
Reading	130 Minutes per Week	General Education	TchrHSSpecial Ed BI

The IEP from the prior district identified several accommodations/modifications needed by the Student, including in part extra time to complete assignments and extra time on tests/quizzes.

3. The Student’s IEP from the prior district noted that the Student’s behavior negatively impacted his learning and/or the learning of others. A behavioral intervention plan (BIP) had been

² Teacher high school special education, behavior intervention.

developed for the Student and was attached as a three-page addendum to the IEP. The BIP included the Student's seven patterns of behavior and five instructional and environmental conditions or circumstances when they might occur. To address those issues, there were positive behavioral interventions and supports listed. The BIP stated, "Target behavior: Escape maintained behavior with verbal and/or physical disruption, and sometimes physical aggression." Replacement behavior: "On task work completion OR break pass used for quiet break away from work." It then identified three items:

- "Work board/checklists will be used to help [the Student] visualize his work/tasks each day. (i.e. first work, then break)"
- "Breaks will be explicitly taught. Make it clear when [the Student] is allowed to take a break (used as a regulation strategy or earned, how long to take a break, with someone/independently, where, etc.). Use a visual for the amount of work that needs to be completed before a break if that is the expectation."
- "Student will be taught a variety of emotional regulation strategies such as those taught Zones of Regulation, Social Thinking, SuperFlex, etc. These strategies should include sensory/physical outlets, activities, mindset/thinking exercises and activities as well as any fidget or calming tools."

The BIP also included "Reinforcers of Desired Behaviors" and included the following "Methods to Ensure Consistency of Implementation":

- "Clear, concise directions and expectations which are reviewed with [the Student] often by classroom team."
- "BIP implemented daily and reviewed as needed by IEP team members."
- "Classroom team completes a daily behavior sheet to track significant behaviors which is then scanned and emailed home daily. 2x daily check in with [the Student]."
- "Case manager collects and summarizes IEP goal data monthly."
- "Plan for subs."

The BIP also had a section on antecedent interventions, which included:

- "Check in: [the Student] will check and connect with BI twice a day."
- "Breaks: He can access breaks. These breaks will take place in the BI room and will include drawing activities, fidgets; reading a book (calming/minor preferred activities). He can verbally say 'I want a break' or show a break card to the teacher. [The Student]'s breaks will be (10) minutes in length."
- "[The Student] may take a 5-10 minute break in class if he is feeling frustrated or angry."
- "[The Student] will verbally request a break from the classroom teacher."
- "The classroom teacher can offer a break to [the Student]."
- "The length of [the Student]'s break in the BI room will be determined by [the Student] and his teacher."

The BIP also included "Academic Accommodations," such as "Give extra time and breaks to assist in task completion." It also had consequence interventions that were to be implemented when the targeted behavior occurs.

2021–2022 School Year

4. According to the Parent, on August 19, 2021, she enrolled the Student for the 2021–2022 school year to attend eighth grade in a District middle school using the District's online

registration tool. As part of that registration, she marked a box noting that the Student had been on an IEP in his prior district.

5. On August 30, 2021, the District requested the Student's records from the prior district, including special education records—a standard part of the District's record request form. The District's middle school did not receive the special education records when the Student's other records were received.
6. According to District staff, due to an error when the Student's registration was uploaded into the District's student management system, Skyward, the Student was not initially identified as a special education student. Therefore, he was not brought to the attention of the school psychologist, the eighth grade case manager, or the middle school counselors at the start of the school year.
7. The District's school year started on September 8, 2021. The Student was scheduled for and attended the following general education classes from the start of school until March 7, 2022:
 - Advisory – with the Student's English Language Arts (ELA) teacher
 - 1st period – 8th Grade ELA
 - 2nd period – 8th Grade Science
 - 3rd period – 8th Grade PE
 - 4th period – 8th Grade Pre-algebra
 - 5th period – 7/8 Art
 - 6th period – US History³

The middle school bell schedule indicated that advisory is generally 30 minutes on four days of the week: Mondays, Tuesday, Thursdays, and Fridays. The Student's other classes are generally 51 minutes per day, except on most Wednesdays when the school is on a late start bell schedule. On late start Wednesdays, classes are 45 minutes per day. Thus, most weeks, the Student had 249 minutes in each class, except for advisory.

8. The District provided a "Contact Attempt Report" form regarding a letter sent to the Parent on September 15, 2021, which had contact and response dates of September 15, 2021. The response notice stated, "Parental permission to proceed without reconvening."

The Parent told the OSPI investigator that she never received a letter, dated September 15, 2021, and did not give permission for the District to meet to discuss the Student's IEP without her. The Parent said she has attended all the Student's IEP meetings since kindergarten and wanted to provide input, but she was not consulted by the District about the Student's prior history, services, or IEP and BIP.

When asked in an interview with the OSPI investigator about the September 15, 2021 letter referenced in the "Contact Attempt Report," the school psychologist said she did not know

³ The US History teacher has a special education teaching certification/endorsement and is the middle school's special education case manager for sixth graders, but none of the other teachers had that certification/endorsement.

what letter that document referred to and that she never contacted the Parent or sent her a letter on September 15, 2021. The school psychologist said that she was unaware that the Student was eligible for any special education services until September 20, 2021, when the Student's US history teacher contacted her.

9. On September 20, 2021, the US history teacher spoke to the Student's Parent about behavioral issues she observed with the Student. During that conversation, the Parent informed the teacher that the Student had both an IEP and BIP in his prior district.
10. Also, on September 20, 2021, the US history teacher emailed the middle school's school psychologist and shared the information from the Parent that the Student had an IEP and a BIP in his prior district.
11. Later, on September 20, 2021, the school psychologist contacted the prior district and obtained the Student's IEP, including the BIP. The school psychologist also received a copy of the Student's most recent evaluation conducted by the prior district, which was dated May 16, 2019.
12. On September 23, 2021, the middle school's student support team (SST), which some staff also refer to as a multidisciplinary team (MDT), met. At that meeting, the US history teacher noted that she was having issues with the Student's behavior in her classroom, but none of the Student's other teachers that were present noted any behavioral concerns. The team was notified that the Student had an IEP and BIP.

Neither the school psychologist nor the Student's ELA teacher attended the September 23, 2021 meeting.

13. On September 24, 2021, the ELA teacher contacted the Parent to discuss behavioral issues he was having with the Student in his classroom and to inquire about the Student's adjustment to his new school. The Parent informed him that the Student was having a hard time with the adjustment, had prior challenges, and had an IEP and BIP in the prior district. The Parent also informed the teacher that the break system that was part of the Student's BIP at his prior school had worked well. And she said, "It helps when he feels like he can have a go to person to talk to at school as needing to feel supported and heard is important to him."
14. Also, on September 24, 2021, the ELA teacher contacted one of the counselors and asked them to check whether there is an IEP on file for the Student.
15. Also, on September 24, 2022, the school psychologist, the eighth grade special education case manager, and the middle school assistant principal convened an "IEP committee" and held a transfer meeting. At that meeting, those three District staff members reviewed the Student's IEP from the prior district. They recommended that the Student "Continue LRE Placement in Accordance with Previous IEP," and signed a "Transfer Review" document. The least restrictive environment (LRE) noted on the document was "40-79% in general class setting."

16. Included in the response the District provided to OSPI were a meeting notice to the Parent dated September 24, 2021, the same day as the meeting, and a prior written notice (PWN), dated September 24, 2021, which stated the District was "proposing" to "continue" and "Other: Transfer Review." The PWN also stated that procedural protections under the IDEA are explained in the "Notice of Procedural Safeguards for Special Education Students and Their Families." And it stated to contact the school psychologist if a copy of the notice is not enclosed.

17. The Parent told the OSPI investigator that she never received the transfer review meeting notice, nor any PWN or procedural safeguards from the District. She stated that she has never received any written notices from the District, nor was she even aware that the prior district's IEP had been adopted by the District until a parent-teacher conference on October 27, 2021.

The school psychologist told the OSPI investigator that she filled out special education paperwork during and right after the September 24, 2021 transfer meeting. The school psychologist said she did not send written special education notices to the Parent because she usually only does that for IEP meetings. The school psychologist said she usually calls parents to let them know what they are doing, but she did not do that this time. The school psychologist said, "There was another student like this too. I was just bombarded with stuff and dropped the ball and did not do that." The school psychologist said she did, however, verbally informed the Parent of the decisions they had made and their plan for the Student at the Student's parent-teacher conference, which was held on October 27, 2021.

18. According to the District's response to OSPI, the Student's initial class schedule had two class periods in classrooms supported by paraeducators: history and math. According to the District, the eighth grade history class was "supported with a special education para-educator which works with the teacher to modify notes, reduce writing tasks, access 1 to 1 help/support, preferential seating, extra time to complete class work, [and] modified IEP schedule[s]." And the response stated the eighth grade pre-algebra classroom was also supported with a special education paraeducator. But the school psychologist, in her interview with the OSPI investigator, stated that the paraeducator was removed from the Student's period pre-algebra class at some point before the winter break to assist with covering lunch.

19. The District stated in its response that in addition to having those two classes with paraeducators in them, "the Student was set up to receive all of the accommodations and modifications that were stated in his IEP in the other classes on his schedule."

20. After receiving the District's response, the Parent told OSPI she does not believe the Student's IEP and BIP were implemented because:

- The Student is supposed to receive at least 300 minutes a week of special education services for behavior and there was no evidence of that in the District's response.
- She received several calls about the Student's behavior from teachers, and the PE and US history teachers specifically told her many times that they had sent the Student to the office due to his behavior.
- A check in and check out system was never developed.

- The Student was not given the opportunity to take breaks consistent with his BIP until December of 2021 and after that, it ended up being a pass to walk around the hallways, which the Student overutilized because it fed his symptom of “fighting” when needed.
- The Student had 26 missing assignments overall with the majority being in Math, History, and English in the first quarter. And, even after the Student’s schedule was changed on March 7, 2022 to include an academic support class, he still had an additional eight assignments missing. The Parent also provided information about the Student’s grades that indicated that in the first and second quarters, the Student received all “Ds” in his academic courses (ELA, Math, Science, and US History), except for a “B” received in ELA at the second quarter/semester.
- Despite the Student’s IEP accommodation for extra time, the ELA teacher told the Parent at an October 27, 2021 parent-teacher conference that he does not accept late assignments, which led the Parent to believe the teacher either never received the Student’s IEP or was not implementing it.

21. When asked how and when the Student’s teachers were provided with copies of the Student’s IEP and BIP, neither the special services director nor the school psychologist could say with certainty. The school psychologist said that the Student’s IEP and BIP were discussed at SST/MDT meetings, but that she relied on the case manager to provide the teachers with copies of the necessary parts of the IEP documents, such as goals, accommodations, modifications, and the BIP.⁴

22. On October 11, 2021, the US History teacher emailed the school psychologist about the Student again. The teacher stated, “I have serious concerns about [the Student’s] in-class behavior and would like to discuss him at MDT. We were supposed to be transferring his IEP and behavior plan, and I haven’t seen those yet.” The school psychologist replied that the Student is on the eighth grade case manager’s caseload. The school psychologist said she had a training on Thursday (the date of the upcoming SST/MDT meeting), but “if you all want to talk about him, I can set up the MDT agenda.” The school psychologist said that the US History teacher (who is also the sixth grade case manager) and the seventh grade case manager could facilitate the meeting.

23. According to notes of an October 14, 2021 MDT/SST meeting, the Student and four other students were discussed at the 30 meeting. The Student’s ELA/advisory, science, pre-algebra, and US history teachers, as well as the seventh and eighth grade case managers, assistant principal, and principal, all attended that meeting. A special education behavior intervention teacher also attended the meeting. But the Student’s PE and art teachers did not attend.

24. According to the US history teacher, the first time she received a copy of the Student’s IEP was at that October 14, 2021 MDT/SST meeting. The teacher said she also received a copy of the Student’s BIP at that meeting, but because she is a special education teacher, she had already been implementing some of the behavioral strategies and accommodations/modifications before receiving the IEP and BIP.

⁴ As noted in the procedural section, the case manager is on leave and was unavailable to confirm this information.

25. The teacher who taught the Student for both ELA and advisory from September 8, 2021 through mid-March of 2022 could not recall if he attended the October 14, 2021 meeting, nor could he recall when he first received a copy of the Student's IEP, including the BIP. But he said that he had received it, and he was aware of the Student's IEP goals related to reading and writing, the accommodation/modifications, and the Student's BIP. According to information provided by the District, that teacher attended the October 14, 2021 SST/MDT meeting, but he was not present at the earlier September 2021 SST/MDT meeting.

26. During an interview with the OSPI investigator, the ELA teacher said that he is a general education teacher and he did not have any special education paraeducators in his advisory or ELA classes. The ELA teacher was asked about how the Student's special education services for writing and reading were provided in his general education class. The teacher said, "I was not aware that he needed special education for writing and reading, and I don't recall seeing specific amounts for Reading and Writing. My understanding was that it was a behavioral thing and he was doing well for the most part in my class." The teacher said, "I was talking with mom if it was a matter of motivation. Sometimes he just wanted to sleep instead of work on some things. And I knew there were accommodations because I have those and provided them."

When asked about the Student's specific writing goal in his IEP, the ELA teacher said, "I do remember seeing that. We were using Quill, a diagnostic tool and individualized assignments." And when asked about the Student's reading goal, the ELA teacher said, "I think the full IEP was left in my mailbox, because I'm not finding it in my email. I'd check that and most of it was stuff we were already doing. It didn't raise any red flags." When asked how and with whom he was working on monitoring and measuring those goals, the ELA teacher replied that he thought the sixth or eighth grade case managers followed up on that. He said, "The case managers would ask for feedback and any other behavioral things. So they'd ask academic questions and social questions. In general, his performance really had more to do with was he sleepy that date or was he peppy and engaged to do the work." When asked how they asked for feedback, he referred to a March 8, 2022 email from the eighth grade case manager that asked questions about the Student's "iReady Reading scores" and a "chunking assessment." Then ELA teacher said the Student's "writing assessment score was 90%, but that was slightly modified a bit for him."

27. The OSPI investigator also asked the ELA teacher how he implemented the Student's various accommodations and modifications. For the most part, the teacher provided information to substantiate that the Student received accommodations and modifications. But when asked about granting the Student "extra time to complete assignments," the teacher said:

I will take I will take quizzes and major benchmark assignments late. But if they [students] forgot and they are small point assignments, I do not take those late. If they were absent and it was excused, then they get an extra day for every day. And if they ask for extra time before the due date, then they can get it. But if they just forget to turn it in, then I don't take small assignments late.

28. On October 14, 2021, the assistant principal, a school counselor, and the US History teacher met with the Student and discussed their concerns about his behavior. The assistant principal

and teacher both told the OSPI investigator that during that meeting, the Student said that he did not want to be placed in the special education behavior intervention teacher's classroom. Additionally, a "check in / check out system" for the Student to meet with the assistant principal was discussed with the Student.

29. On October 27, 2021, a parent/teacher conference was held with the Parent, the general education ELA/advisory teacher, a school counselor, and the school psychologist. There was no special education teacher present at this meeting. The Parent and the school psychologist both told the OSPI investigator that it was at this meeting that the Parent was first verbally informed that the District had adopted the prior district's IEP for the Student. The following were discussed:
- Student's BIP;
 - Having the assistant principal and counselor discuss the Student's BIP with the US history teacher;
 - Possibly changing the Student's schedule to place him in the special education behavior intervention teacher's academic support class; and,
 - Implementing a "check in / check out system" for the Student with the assistant principal.
30. Although it was discussed at the October 27, 2021 parent/teacher conference, the Student's schedule was not changed to place him in the special education behavior intervention teacher's academic support class until March 7, 2022. The District's position was that this was not done earlier because the Student did not want to be in the behavior intervention teacher's class.
31. When asked about the check in and check out system, the assistant principal told the OSPI investigator that the intent was for the Student to check in with him before school and then check out with him again at the end of the day. But the assistant principal said that the Student only did this sporadically "for about two weeks" and then stopped doing it. The assistant principal said at that point, he asked the Student to check in with him at the beginning of the day and to find him (the assistant principal) to check out at the end of the day. The assistant principal said, as time permitted, he also checked in on the Student in his classes.
32. The District provided email correspondence to support its position that the assistant principal checked in on the Student. That correspondence indicated that on one occasion, November 5, 2021, the school psychologist asked the assistant principal or dean to "check in" with the Student because of ongoing concerns about the Student's behavior in the US history class. The email correspondence indicated that the assistant principal spoke with the Student during that class, on November 5, 2021, and the teacher thanked him for doing so.
33. During the interview with the OSPI complaint investigator, the Student's history teacher said that she did not recall the assistant principal ever coming to her class specifically to just have a "check in" on the Student.
34. At the end of the first quarter, the Student received a D+ in ELA, a D in science, a D in pre-algebra, a B+ in art, and a D in US history.

35. In November of 2021, the Parent raised concerns with the District about bullying of the Student by another student. On November 28, 2021, the Parent wrote to the principal about a video recording of the other student physically attacking the Student. The Parent questioned why teachers in the video did not protect the Student. The email also stated:

I would also like to ask for an IEP meeting as we haven't had one since he started school at your district and his IEP is not being followed as he is supposed to be getting extra help and time to do school work/tests and this has not been happening. At the parent teacher conference last month, they told us that the school was going to set up a break system when he is feeling overwhelmed, that is clearly identified in [the Student's] IEP and [the Student] told me tonight that it is still not set up.
36. The District did not provide any evidence that the principal or anyone else in the District responded to the Parent's November 28, 2021 request for an IEP meeting.
37. On December 6, 2021, the school psychologist made the Student a laminated pass that the Student could use to take a break when needed. The same date, the principal emailed the Student's teachers and staff, informing them that the Student can use the pass "to take a quick walk, go to the restroom, come to [the principal's] office, or the Counseling Center." The principal also talked with the Student, who indicated he was receptive to utilizing the system.
38. At the end of the second quarter/first semester, January 21, 2022, the Student earned a B in ELA, a D in science, an A in PE, a D in pre-algebra, an A in art, and a D in US history.
39. On February 16, 2022, the ELA teacher contacted the Parent about the Student wearing a hood in class. The same day, the Parent replied and raised concerns about the Student's IEP, BIP, grades, and need for better support. The Parent also, again, asked for an IEP meeting.
40. A meeting was scheduled for March 2, 2022, at 2:20 pm, during parent/teacher conferences. In their response to OSPI, the District referred to this as an IEP meeting. However, the District did not provide any information to substantiate that this was a meeting consistent with IEP procedural requirements.
41. On March 7, 2022, the Student's schedule was changed to remove him from US history in sixth period and place him in the special education behavior intervention teacher's academic support class. This is the same class that had previously been discussed with the Parent on October 27, 2021, at the fall parent/teacher conference.
42. The District's position was that this Student's schedule was not changed earlier to place him in the behavior intervention teacher's class because during a November 1, 2021 meeting with the Student, the school counselor, and the school psychologist, the Student "was adamant he did not want to go to the BI classroom for the Academic Support class."
43. On March 8, 2022, the District was notified that the Parent had filed this complaint.

44. On or around March 22, 2022, the eighth grade case manager went on leave for the remainder of the year. At that point, the seventh grade case manager took over responsibilities for reviewing and monitoring the Student's special education services.
45. On March 24, 2022, District staff, including several of the Student's teachers, administrators, the school psychologist, and the seventh grade case manager, met with the Student, the Parent, and the Student's grandfather to discuss the Parent's concerns with the implementation of the Student's IEP. After that meeting, no changes were made to the Student's IEP, but the Student's schedule was changed as follows:
- Advisory – the Student teacher was changed from the general education ELA/advisory teacher to the special education behavior intervention teacher for this 30-minute class.
 - 1st period – the Student was transferred into a special education teacher's eighth grade ELA class for this 50-minute class.
 - 6th period – consistent with the March 7, 2022 change, the Student stayed in the special education behavior intervention teacher's academic support class, which is a 50-minute class.

The Student's fourth period general education pre-algebra class was not changed. Additionally, the team discussed that the Student would have daily check-ins and breaks with the special education behavior intervention teacher. And that teacher would also begin communicating with the Parent on a weekly basis.

46. The Student's triennial reevaluation is due May 19, 2022. The District has conducted the reevaluation and plans to hold an IEP meeting with the Parent on Friday, April 22, 2022.

CONCLUSIONS

Issue: IEP Implementation – The Parent alleged in her complaint that the District failed to implement the Student's individualized education program (IEP).

Intrastate Transfer Procedure: While OSPI did not specifically open an issue to investigate transfer procedures, the facts of this complaint investigation necessitate addressing transfer procedures first before addressing IEP implementation. This is because OSPI first had to determine what IEP was being implemented—or not implemented—as the Parent alleged.

There was an initial delay in realizing the Student was eligible for special education, which the District acknowledged and stated was due to a records issue. On August 19, 2021, the Parent enrolled the Student in the District utilizing the District's online registration process and indicated in that process that the Student had an IEP. The District—based on its standard record request form—requested the Student's special education records from the prior district on August 30, 2021, before school started on September 8, 2021. However, the District's middle school did not receive the prior district's special education records. And because of an error in the District's system for transferring information from the District's online registration system into the student information system, the Student's middle school staff were not aware that the Student was eligible for special education services. Therefore, the Student was scheduled in all general education classes, and he was not initially provided any special education services. Further, none of the

Student's teachers were aware of his need for accommodations/modifications or the requirements of his behavioral intervention plan (BIP).

On September 20, 2021, the Parent informed a teacher that the Student had an IEP and BIP. The same day, the school psychologist obtained the Student's IEP, BIP, and his most recent evaluation from the prior district. On September 23, 2021, school administrators and some of the Student's teachers briefly discussed concerns one of the Student's teachers had about the Student's behavior. They were also informed that the Student had an IEP and a BIP, but at that time, the District had not made any decision about whether to adopt the prior district's IEP or develop their own.

The intent of the transfer procedure is to ensure that a student's free appropriate public education (FAPE) is uninterrupted by the transfer from one school district to another. When a student with an IEP transfers from one Washington school district to another, a district is required to, in consultation with the parents, provide comparable services until the District either accepts the IEP or develops, adopts, and implements a new IEP. Regarding prior written notice, a parent has a right to written explanation of a district's decision regarding the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student a reasonable time before the implementation of the decision to consider dispute resolution options if the parent disagreed with the decision.

On September 24, 2021, the District conducted a transfer review meeting with the school psychologist, the school's assistant principal, and the eighth grade case manager. However, the District did not consult the Student's Parent about the Student's prior IEP or BIP prior to the meeting, nor did the District invite the Parent to, or notify her of, the transfer review meeting. At the September 24, 2021 meeting, the District decided to adopt the prior district's IEP. However, the District failed to provide the Parent with any written notice of the decision to adopt and implement the prior district's IEP. Despite no changes being made to the prior district's IEP, the District was still required to provide written notice to the Parent of the District's decision to implement the IEP because the District made a decision about the Student's educational placement and the provision of a FAPE to the Student. The Parent had a right to a timely written explanation of the decision; otherwise, the Parent would not have known whether the District planned to implement comparable services and develop a new IEP or adopt and implement the IEP as is. Although the District verbally notified the Parent of the decision on October 27, 2022, at a parent/teacher conference, such notice is neither timely, nor is it sufficient to meet the requirement of prior written notice required by the IDEA.

Based on the above, OSPI finds that the Student's FAPE was interrupted during his transfer for over two weeks. This interruption of FAPE was due, in part, to systemic breakdowns in (a) the District's communication with the prior district and (b) the District's registration system's failure to note the Student's status as a special education student. According to the school psychologist, the Student at issue in this case was not the only student affected by these breakdowns. Further, the District did not follow transfer procedures as it failed to consult with the Parent as part of the transfer process or provide prior written notice of the decision to implement the IEP. OSPI finds a violation.

To address this issue, the District must provide training regarding obtaining transfer records, transfer procedures, and prior written notice. Additionally, the District must review its student information system and develop procedures, if necessary, to ensure accurate reporting of students' special education status when students are registered in the District. And the District will conduct a review of all of its 2021–2022 student transfer registrations to ensure that no other special education students were missed due to errors in the District's registration process.

Implementation of the Student's IEP after Adoption: It is the District's position that after the Student's IEP was adopted on September 24, 2021, the Student's IEP was promptly implemented. The Student's Parent disputes that assertion. And OSPI did not find any evidence that, prior to October 14, 2021, any of the Student's teachers were provided with notice of the requirements and provisions of the Student's IEP. OSPI finds that on October 14, 2021, the Student's IEP was briefly discussed with some of the teachers and that they were provided with notice of the Student's accommodations/modifications and his BIP.

Special Education Behavior Support Services: The IEP adopted by the District stated the Student was to receive 300 minutes per week of special education services for behavior provided in a special education setting by a special education behavior intervention teacher. OSPI did not find any evidence to support the District's contention that it provided any behavior special education services in a special education class from the start of school on September 8, 2021 until March 7, 2022, or for 22 weeks.⁵ On that date, March 7, 2022, the Student's schedule was changed to remove him from his general education history class and he was placed in a special education behavior intervention teacher's academic support class.

Reading and Writing Special Education Support Services: The Student was entitled to 130 minutes of reading and 130 minutes of writing special education services per week to be provided in a general education classroom and the staff responsible for providing the service was a special education behavior intervention teacher. From September 8, 2021 through March 24, 2022, the Student was in a general education ELA class. The class was taught by a general education teacher and there was no paraeducator in the class. Although the general education ELA teacher said he had seen goals regarding reading and writing, the ELA teacher also stated in his interview that he was unaware that the Student was entitled to special education services specifically for reading and writing. The ELA teacher was also unable to articulate how the Student's goals related to reading and writing were tracked and monitored. The ELA teacher said it was his understanding that the Student's special education services were related only to behavior.

Based on this information, OSPI finds that the provisions of the Student's IEP related to reading and writing special education services were not implemented until March 24, 2022, when the Student was transferred to another ELA class taught by a special education teacher.

Math Special Education Support Services: The Student's IEP called for 260 minutes of special education services in math per week to be provided in a general education classroom and the staff responsible for providing the service was a special education behavior intervention teacher.

⁵ This amount excludes breaks.

From September 8, 2021 to present, the Student was in a general education math class, pre-algebra, which was taught by a general education teacher. The District did not provide any information to indicate that a behavior intervention teacher was designated to be responsible for ensuring that the Student received his math special education services in order to attain his goals. The District's response stated that the Student's eighth grade pre-algebra classroom was supported with a special education paraeducator. But other information indicates that the paraeducator was removed from the Student's pre-algebra class before the winter break to assist with covering lunch.

The District did not provide information about how the Student's services and progress toward goals were tracked and monitored. The school psychologist told OSPI that the eighth grade case manager assigned to the case had been responsible for ensuring provision of services until approximately March 22, 2022. But because the eighth grade case manager and math teacher were not available for interview, OSPI was not able to substantiate that the pre-algebra teacher was provided information about the Student's IEP math goals and need for special education service minutes in math. Importantly, the District provided no special education progress reports indicating the progress on IEP goals.

Considering all the above, OSPI is unable to substantiate that the Student received any of his special education math services as required by his IEP.

Behavioral Intervention Plan: The Parent stated that the District did not implement the Student's BIP with fidelity as the Student was sent to the office several times due to his behavior, a check in and check out system was never developed, and the Student was not given the opportunity to take breaks consistent with his BIP until December of 2021. The Parent also asserted that "breaks" then became a pass to walk around the hallways, which the Student overutilized because it fed his symptom of "flighting" when needed.

The assistant principal said that a check in and check out system was attempted, whereby the Student was to go to the office and check in with him in the morning, and then find him at the end of the day and check out. But the assistant principal said the Student only utilized that system for about two weeks.

OSPI did not find credible evidence that from September 8, 2021 to the March 24, 2022 meeting, the District implemented the provision of the IEP that required that the Student will check and connect with a special education behavior intervention teacher or specialist twice a day. OSPI did find, however, that the District did develop a plan for the Student to access breaks on December 6, 2021. According to the BIP, "These breaks will take place in the BI room and will include drawing activities, fidgets; reading a book (calming/minor preferred activities). He can verbally say 'I want a break' or show a break card to the teacher. [The Student]'s breaks will be (10) minutes in length." OSPI finds that the breaks allowed the Student to wander the halls, go to the bathroom, or go to the office. As noted above, the Parent is concerned that allowing the Student to use breaks in this manner was not effective as it allowed him to engage in "flight" behavior consistent with his autism and avoid tasks or assignments that he found difficult.

The District did not offer and OSPI did not find any evidence that the District implemented the following provisions of the BIP, "Reinforcers of Desired Behaviors" and "Methods to Ensure Consistency of Implementation":

- "Clear, concise directions and expectations which are reviewed with [the Student] often by classroom team."
- "BIP implemented daily and reviewed as needed by IEP team members."
- "Classroom team completes a daily behavior sheet to track significant behaviors which is then scanned and emailed home daily. 2x daily check in with [the Student]."
- "Case manager collects and summarizes IEP goal data monthly."
- "Plan for subs."

Based on the above, OSPI is unable to conclude that the District implemented the Student's BIP with fidelity.

Modifications and Accommodations: The District indicated that the Student received his accommodations and modifications. The Parent disputes that and stated that at least one teacher, the ELA teacher, refused to accept late work from the Student despite the accommodation for extra time on assignments. During his interview, the ELA teacher said that he took quizzes and major benchmark assignments late. But he does not accept small point assignments late from students unless they have an excused absence or asked for extra time before the due date. Because the Student's IEP accommodations allow for extra time for assignments, OSPI finds that the practice of not accepting small point assignments late denied the Student a necessary accommodation.

Conclusion with respect to implementation: Considering all the information above, OSPI finds that the District failed to materially implement the Student's IEP after it adopted the prior district's IEP on September 24, 2021. OSPI finds that beginning on March 7 and 24, 2022, some provisions of the IEP related to the reading, writing, and behavioral services began to be implemented. But due to the lack of substantiating evidence, OSPI is unable to conclude that the District had ever implemented the Student's special education math services. Therefore, OSPI finds that the District denied the Student a FAPE and violated provisions of the IDEA requiring implementation of the Student's IEP.

The District will be required to provide compensatory education to the Student and training to staff on IEP implementation. Between the start of the school year and March 7, 2022, when the complaint was filed, amounts to approximately 22 weeks. This means the Student was denied the following amounts of specially designed instruction: approximately 6,600 minutes (110 hours) of special education behavior services; 2,860 minutes (48 hours) each in reading and writing, and 5,720 minutes (95 hours) of math. Given that the District failed to provide any specially designed instruction and some of his accommodations, did not fully implement the Student's BIP, and did not report on the Student's progress on his IEP goals (and his general grades were poor), OSPI will require the District to provide 100% of the missed instruction.

Additionally, the Student's IEP team will be required to meet because not only did the IEP team delay in meeting despite Parent requests for a meeting (discussed below), but when the IEP team

did meet in late-March 2022, it declined to amend the Student's IEP but changed the Student's schedule. While OSPI notes the schedule changes were an appropriate attempt to ensure the Student was going to be provided specially designed instruction moving forward, the Student's schedule changes still did not allow his IEP to be *implement as written*. For example, the IEP calls for reading and writing specially designed instruction to be provided in the general education setting and the schedule change placed the Student in a special education ELA class. The IEP called for behavior services in a special education class, but the Student's schedule was changed to place him in an academic support, not behavior support, class with a special education behavior intervention teacher. And the amount of weekly service minutes for the areas of specially designed instruction were not changed, even though, except for advisory, each of the Student's classes met for 249 minutes, not 260, minutes per week.

Convening the IEP Team: Again, while OSPI did not specifically open on the issue of IEP team meetings, given the above discussed implementation failure and the school staff acknowledgment that the IEP was not being implemented properly, OSPI cannot ignore the failure to hold an IEP meeting until March 2022.

District staff, including the school psychologist, indicated that they knew that the Student was not receiving the special education minutes specified in his IEP, including the 300 minutes per week of behavior intervention services in a special education setting. Several District staff said that they did not change the Student's IEP, because they knew he was due for a new evaluation and wanted to see how he would do if 100% of his services were provided in the general education setting. OSPI does not find this to be a reasonable explanation as the Student's reevaluation was not due until May of 2022, which was eight months after the Student entered the District. An approaching reevaluation is not a valid reason to not implement a student's IEP as written. Similarly, the District indicated the Student was not placed in a behavior class because the Student did not want to attend such a class. While a student's preferences are valid and this may be important information for the reevaluation, it is not consistent with the IDEA to allow a student to opt out of a service the IEP team has determined necessary. And OSPI found no evidence that, in the interim, the District made any effort to convene an IEP team to reconsider whether the Student's placement in general education for 100% of his academic school day was more appropriate than his existing IEP, to discuss initiating the reevaluation early, or to discuss the Student's preference to not be in a behavior class. Such a delay is egregiously unreasonable.

Moreover, OSPI found that instead of convening IEP team meetings, the District held informal meetings about the Student's special education program with the Parent during parent/teacher conferences held with all students' parents on October 27, 2021 and March 2, 2022. Those meetings did not meet the IDEA's procedural requirements for specific participants to be present or explicitly excused during IEP meetings, as there was no administrator or special education teacher present at those meetings, nor were there any IEP documents created, such as meeting notices.

Finally, OSPI did not find evidence that the District properly responded to the Parent's requests for IEP team meetings on November 28, 2021 and February 16, 2022. OSPI did not find that the

District convened any IEP team meetings between the time the Student transferred into the District on August 19, 2021 through March 7, 2022, when the Parent filed this complaint.

Considering the above, OSPI finds that the District failed to convene IEP team meetings (1) to discuss and address deficiencies between the Student's initial schedule and the IEP adopted on September 24, 2021 or to address other needs of the Student and (2) as requested by the Parent. As a result, the District kept the Student in classes that did not align with his IEP and resulted in his IEP not being implemented for almost eight months. Therefore, OSPI finds a violation and a denial of FAPE under the IDEA. The District will be required to conduct training on IEP meetings and convene the Student's IEP team to discuss and ensure the IEP is being implemented properly.

CORRECTIVE ACTIONS

By or before **May 20, 2022, June 15, 2022, September 15, 2022, October 7, 2022, January 13, 2023, March 15, 2023, and April 27, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **May 13, 2022**, the Parent and District will develop a schedule for the following hours of compensatory education:

- Behavior: 110 hours
- Reading and Writing: 48 hours each
- Math: 95 hours of math

The Student's IEP team can agree to provide the compensatory education services through any combination of the following: provided services outside of the school day during the remainder of the 2021–2022 school year; provided compensatory education services this summer; and provided additional services outside of the District's school day during the 2022–2023 school year, including extended days, weekends, and District breaks. Additionally, the District and Parent could agree to provide some amount of the above through a mutually agreed upon private service provider, appropriate summer camp, or provide reimbursement to the Parent for private services if the Parent accesses any private services for the Student.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, as appropriate. The District will provide OSPI with documentation of the schedule for services by or before **May 20, 2022**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **April 20, 2023**.

By or before **September 15, 2022, January 13, 2023,** and **March 15, 2023,** the District will provide OSPI with updates about its progress in providing the Student with the compensatory education services identified above. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **April 27, 2023,** the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **April 27, 2023.**

IEP Meeting

By or before **May 16, 2022,** the Student's IEP team, including the Student if he would like to attend, will meet to discuss how the Student's current IEP is being implemented and whether the Student's schedule allows his IEP to be implemented as written. The IEP team should discuss the Student's placement and schedule in the least restrictive environment for the Student for the remainder of the 2021–2022 school year. The IEP team should amend the IEP as necessary and appropriate.

By or before **May 20, 2022,** the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the IEP; and, d) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision.

The following District staff at the Student's school will receive training: certificated special education teachers, school psychologists, case managers, and general education teachers, and District special education administrators. The training will cover the following topics:

- Transfer procedures, including:
 - Timely requests, obtainment, and tracking of records requests from prior districts upon special education students' transfer into the District
 - Transfer procedures, including parent consultation and prior written notice
- IEP implementation
- IEP Meeting Requirements:
 - The requirement to respond to parent requests for IEP team meetings
 - Best practices around when to meet based on a student's needs or change in need

The training will include examples. The District is encouraged, but not required, to use the following eLearning training modules as part of its training or as supplemental activities for staff in addition to the training.

- "Service Delivery in the Special Education Process"
- "Progress Reporting in the Special Education Process"
- "Prior Written Notice in the Special Education Process"

The training modules have been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>.

By or before **May 20, 2022**, 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 **June 15, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by June 30, 2022.

By **September 30, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 7, 2022**, 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.

Procedure and File Review

By or before **May 31, 2022**, the District will:

- Review its student information system to ensure students are being correctly identified as eligible for special education services in the systems utilized by the District.
- If there are still technical issues with the system, the District will develop procedures to ensure accurate reporting of students' special education status when students register in the District.

By **June 15, 2022**, the District will provide OSPI with a summary of its review findings, including whether procedures needed to be developed. If procedures were developed, the District will provide OSPI with a copy.

By **May 31, 2022**, the District will also review all of its 2021–2022 student transfer registrations to ensure that no other special education students were missed due to errors in the District's registration process. If any such students are found, the District must take steps to both address the reasons for the errors and develop and plan for, and provide, compensatory education to any students that did not receive FAPE as a result of being overlooked.

By **June 15, 2022**, the District will provide OSPI with a summary of its findings and if any additional students are owed compensatory education, a list of those students. OSPI will review and determine if any further corrective action reporting deadlines are necessary.

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 May, 2022

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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