

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-139**

### **PROCEDURAL HISTORY**

On October 10, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On October 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 12, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 16, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to November 3, 2023.

On November 1 and 3, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on November 6 and 7, 2023. OSPI invited the Parent to reply.

On November 8, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on November 9, 2023. OSPI forwarded the information to the Parent on November 13, 2023.

On November 10, 2023, OSPI received the Parent's reply. Included as a recipient on the Parent's reply with OSPI was both a District staff person and multiple individuals from the District's law firm.

On November 14, 2023, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent. On November 21, 2023, OSPI received the requested information. OSPI provided the District a copy of said information on November 27, 2023.

On November 14, 2023, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On November 14 and 15, 2023, OSPI received the requested information. OSPI provided the Parent a copy of said information on November 27, 2023.

On November 27, 2023, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. On December 1, 2023, OSPI received the requested information. OSPI provided the Parent a copy of said information on December 4, 2023.

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

## SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 11, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

## ISSUES

1. Beginning October 11, 2022, did the District follow proper procedures for determining the Student's least restrictive environment (LRE)?
2. From October 11, 2022 through March 2023, did the District follow proper procedures for implementing any speech language pathology (SLP) provisions of the Student's individualized education program (IEP)?<sup>1</sup>

## LEGAL STANDARDS

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9<sup>th</sup> Cir. 1994).

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<sup>1</sup> During the instant investigation, the Parent clarified her allegation regarding improper SLP implementation related to the time period of October 11, 2022 through mid-January 2023; the Parent clarified she did understand the Student began to receive services on January 23, 2023.

Consideration of Less Restrictive Placement Options: Less restrictive placements always have to be considered, but they do not always have to be tried. As a rule, when there is uncertainty about the appropriate placement for a student, a district should make a diligent effort to educate him in a less restrictive environment before proposing a more restrictive one. *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9<sup>th</sup> Cir. 1996).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

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 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9<sup>th</sup> Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

## FINDINGS OF FACT

### Background: 2022–23 School Year

1. At the start of the 2022–23 school year, and the Student’s January 19, 2022 individualized education program (IEP) was in effect. The Student was eligible for special education services under the category developmental delay.
2. The District’s response included numerous documents dated prior to the investigatory time period for this community complaint, all of which documented, in part, the Student’s needs resulting from the Student’s disability:
  - A private 2018 psychological evaluation noted, “Student demonstrated significant difficulties with nonverbal communication, language, and social interaction...He also displayed clear sensory differences, repetitive movements, and delayed play skills.” The report stated, “Given his diagnosis of autism spectrum disorder, Student should be considered for eligibility for special education services...within the category of autism.”
  - A May 2020 evaluation noted the Student demonstrated task avoidance, elopement, “demonstrated serious aggressiveness in the classroom”, “impulsiveness”, and distraction. The evaluation noted the Student performed at an “at-risk range” for “overall behavioral symptoms” and was “in the extremely low range at home and in the low range at school” for adaptive skills. The evaluation also noted, “Student’s receptive and expressive language skills are below normal developmental limits.”
  - A February 2021 assessment revision determined, in part, “Occupational therapy is recommended to be added to the new IEP to address fine motor and visual motor skills needed for Student to perform in the educational program.”
3. The January 2022 IEP included the following annual goals: adaptive 1 (reading fluency); adaptive 2 (writing); adaptive 3 (math); communication 1 (receptive language); communication 2 (expressive language); and communication 3 (pragmatics). The January 2022 IEP included, in part, the following accommodations: ear plugs or headphones; use alarm for time management; and use sensory tools.

The January 2022 IEP provided the Student with the following specially designed instruction (SDI) in a *special education setting*:

- Communication: 30 minutes 1 time a week (to be provided by an SLP)
- Social Emotional: 60 minutes 5 times a week (to be provided by special education staff)
- Adaptive: 270 minutes 5 times a week (to be provided by special education staff)

The January 2022 IEP provided the Student with the following related services in a *special education setting*:

- Occupational Therapy: 30 minutes 1 time a week (to be provided by an OT)
- Transportation: 120 minutes 5 times a week (to be provided by “transportation/bus driver”)

The January 2022 IEP stated the Student would be in the *general education setting* for 6.3% of his weekly schooltime.

The January 2022 IEP noted, in part, “Student needs to work on solving single digit addition math problems using pictures, counters, or number line”, Student can “count 1 – 50 with staff prompts using flashcards”, “Student can identify all upper and lowercase letters when prompted [and] can read common words such as his colors, days of the week, and months of the year [and] can read Fry sight words 1 – 25 independently”, and “Student can independently trace text when prompted [but] needs to work on independently coping text.”

4. Regarding speech services, according to the District:

During the 2022-2023 school year, the District...faced a significant shortage of personnel, including speech language pathologists (SLPs)...The District looked outside the State of Washington to hire contract service providers who could serve students in a remote model. Unfortunately, the supports put in place to facilitate virtual services were inconsistent for the period of November 3, 2022 through January 13, 2023.

...

The District was able to hire [another] SLP to assist the [District’s SLP lead]...and [newly-hired] SLP was able to begin working with the Student on or about January 13, 2023...Once the District hired [this additional SLP] support, the Student received his regularly-scheduled [SLP] services.

5. On September 20, 2022, the SLP communicated with a District staff person regarding the following: the Student’s classroom required “in-person [SLP services]”; the SLP would be able to provide some remote services to the Student’s classroom; and another SLP would be able to provide some shared SLP supports—i.e., the other SLP would likely work with “2 groups of 4 students with a paraeducator support [person].”

**Complaint Investigation Timeline Begins: October 11, 2022**

6. In a January 3, 2023 email to the SLP, the director stated, “another SLP...will be starting [later] this month” and that this individual would work in Student’s classroom.
7. On January 4, 2023, the director emailed the SLP, stating, in part, “[SLP A] will be the SLP supporting you...Her orientation will be on the 12<sup>th</sup> and [we are] hoping we can get her in ASAP after that.” Emails indicated this SLP began working January 17, 2023.
8. The District’s response included progress reporting related to the Student’s January 2022 IEP. Entries dates mid-January 2023 showed, in part: social emotional 1 (mastered); social emotional 2 (emerging skill); communication 1 (emerging skill demonstrated); communication 2 (emerging skill demonstrated); communication 3 (emerging skill demonstrated); adaptive 1 (insufficient progress); adaptive 2 (mastered); adaptive 3 (mastered); and adaptive 4 (emerging skill).
9. The District’s evaluation group completed a reevaluation of the Student on January 20, 2023.
10. The Student’s IEP team created a new IEP for the Student on January 20, 2023.

The January 2023 IEP included the following annual goals: adaptive (ability to accept feedback); occupational therapy (keyboarding); social emotional (ability to request a desired

item); cognitive-writing (ability to write his first and last name); cognitive-reading (ability to read new words); cognitive-math (ability to compute basic addition facts); communication (expressive language: ability to independently request an item of desire or expressed want).

The January 2023 IEP included, in part, the following accommodations: ear plugs or headphones; use alarm for time management; and use sensory tools.

The January 2023 IEP provided the Student with the following SDI in a *special education setting*:

- Communication: 30 minutes 1 time a week (to be provided by an SLP)
- Social Emotional: 350 minutes 1 time a week (to be provided by special education staff)
- Adaptive: 450 minutes 1 time a week (to be provided by special education staff)
- Cognitive-Math: 350 minutes 1 time a week (to be provided by special education staff)
- Cognitive-Reading: 350 minutes 1 time a week (to be provided by special education staff)
- Cognitive-Writing: 250 minutes 1 time a week (to be provided by special education staff)

The January 2023 IEP provided the Student with the following related services in a *special education setting*:

- Occupational Therapy: 30 minutes 1 time a week (to be provided by an OT)

The January 2023 IEP stated the Student required special transportation. The January 2023 IEP stated the Student would be in the *general education setting* for 0.82% of his weekly schooltime.

A January 20, 2023 prior written notice read, in part, "Parent agreed that IEP could be locked and considered a final IEP. Parent does not have any concerns at this time. Parent would like to see if Student can participate in general education more in the future."

11. A January 30, 2023 email thread between the director and the SLP showed, in part: the SLP provided remote SLP services to the Student's classroom; prior to January 17, 2023, an in-person paraeducator assisted the remote SLP; and beginning on or about January 17, 2023, an in-person SLP worked with the remote SLP in providing SLP services.
12. In additional information the Parent provided to OSPI during the instant investigation, she stated:

SLP services did start January 23 2023, I had the dates incorrect on my initial paperwork....I do know that he did not receive any services from beginning of September 2022 to January 23, 2022. The continuous concern has been an in-person SLP or SLPA for delivering services instead of zoom.
13. According to SLP service provider logs, between February 27 and June 12, 2023, the SLP provided the Student with approximately six hours of services.
14. In its response, the District produced "Medicaid detail logs" that detailed speech therapy that was provided to the Student between February and June 2023. Progress notes included:

Student worked on naming objects with their color...He was able to do so without help 2/5 times.

Student worked on producing 1–3 word phrases. He was able to individually 11/20 times and with assistance 8/20 times. He refused to answer 1/20 times.

Student worked on producing 1–3 word phrases today. When asked a question he responded 5/10 times. He would repeat when given a model 3/10 times.

Student worked on producing 1–3 word phrases today. When asked a question he responded 5/10 times. He would repeat when given a model 5/10 times.

Student worked on producing 1–3 word phrases today. When asked a question he responded 7/10 times. He would repeat when given a model 3/10 times.

Additionally, the June 20, 2023 progress reporting noted emerging skills were demonstrated for the Student's January 2023 social emotional behavior, adaptive, writing, reading, and math goals.

15. A May 10, 2023 compensatory education letter from the District related to speech services. It stated the District was offering 20 hours of speech services as compensatory education for "disrupted speech services" during the 2022–23 school year, and that those services would take place in-person on five days in July, for four hours each day.

The Parent declined the SLP compensatory education offer of May 10, 2023. The Parent stated the Student would have been overwhelmed by "trying to cram [the compensatory SLP services] in 5 days [with] 4 hours [of services] each day."

### **Summer 2023**

16. According to the District, "sometime in August 2023, the Parents began to express an interest in Student spending more time in a *general education setting*." The District stated the Parents "first made the Student's IEP team aware they were seeking greater general education time in approximately late August 2023."
17. On August 31, 2023, the Parent emailed the special education teacher, expressing her understanding the Student would be "bringing his iPad with the app DT snap on it as a communication tool", her belief the Student had made little progress on his IEP goals in spring 2023, her opinion that the Student should be in the general education setting for a greater portion of the school day, and her strong desire that the Student learn to read during the 2023–24 school year.

### **2023–24 School Year**

18. At the start of the 2023–24 school year, the Student continued to be eligible for special education services under the category of developmental delay, was in the fourth grade, attended a District elementary school, and the Student's January 2023 IEP was in effect.
19. According to the District, at the start of the 2023–24 school year, the Student's placement was in the District's "Structured Program, a self-contained program within the District for students

whose primary disability is social-emotional disabilities, but who also have high cognitive and adaptive needs.” The District’s response included a written statement from the director. It read, in part:

Structure[d] classrooms serve our highest need students. These students are typically nonverbal, have low cognitive abilities, and low adaptive skills. They require significant support to access their education and many have 1:1 paraeducator support.

...

Student’s [spring 2020] ABAS-III scores demonstrate that he is low to extremely low in communication, below average in several areas including functional academics, school living, self-care, self-direction, and low in general adaptability.

...

In speaking with Student’s IEP team [during the 2023-2024 school year], they have learned that Student is receiving ABA services in the home. The Parent has also reported that Student is able to perform at a greater level with such supports. For example, the Parent has reported that he knows more sight words than what is being demonstrated in school.

...

The District team members have not seen the necessary evidence for...a placement change [wherein Student would be in a *general education setting* for a longer portion of the school day]. Instead, the District team members have seen Student become ‘lost’ or disengaged when placed with general education peers, even during specialist time.

For example, the January 2023 IEP reflects that Student continues to engage in parallel play, which is typical for preschool age children as compared to a third-grade student who should be able to interact with peers and engage in play.

Student is also unable to follow group activities or instruction. For instance, the music teacher reported that while Student enjoys class, he often has ‘his own agenda’ and ‘sings what he wants to when he wants to not necessarily what I choose for the class.’

Cognitively and academically, Student does not have the typical skills of a third-grader. He can count to 50 and work on basic addition facts. He can identify his letters and is able to read common words such as colors and days of the week. He can write his first name without a model.

As for communication, Student is also below the level of his neurotypical peers. He is able to produce 1-3 word phrases, and follow 1-step directions. However, for the most part, Student does not engage in significant communication and is considered ‘nonverbal’ meaning that his communication is not functional as a communication methodology.

Student’s paraeducator team members have gone with him for specialists, and more recently, they went with him for a math class. A paraeducator accompanies Student for dance and art. She described his participation in specialists as more copying rather than interacting or learning. For example, in dance, he is unable to follow along. He will try and mimic her if she is close by, but the moment she steps away, he will simply drop his arms and disengage. Additionally, the longer the activity goes, the harder it is for him to stay engaged.

In art, the paraeducator described how Student will simply scribble on his paper rather than follow the instruction. For example, one day the class was to take a picture and make their



own version of the picture. Student scribbled for a little while but then lost interest. Instead of drawing, he stood up and turned in circles, waving his arms in the air.

[Recently], the paraeducator has also accompanied him for math. However, she describes Student's interactions in math as more guessing rather than responding. For example, if 5 balloons are presented, he'll press at buttons randomly rather than correctly selecting for 5 balloons. If she attempts to guide him, he will push her hand away.

...

I have also spoken with Student's previous special education teachers regarding the Parent's desire for Student to participate with his general education peers in academic settings. Neither agree with the Parents' assertion that the Student is ready to be in the *general education setting*. Both have described him as not having the cognitive, adaptive, or communication skills to be able to benefit from greater general education access, particularly in the academic areas.

The team is also concerned about Student becoming overwhelmed in the *general education setting* if demands are significantly higher than his capabilities. For example, the team has described Student as getting loud, rocking, and that he will even push his support personnel away. Although he is not aggressive in that he will not tantrum or hit and kick, he nonetheless lets those around him know that he is overwhelmed by disengaging and internalizing.

Nonetheless, the team has attempted to work with the Parent to trial if greater general education access would be beneficial. Student's [program] paraeducators have taken turns taking him to general education math, an area of strength for Student, to see if he is able to engage.

...

[On or about October 13, 2023], the District agreed to administer the CTONI to assess his cognitive, social-emotional, and adaptive skills. The CTONI is designed to allow assessments of students who are nonverbal to try to obtain an accurate picture of their abilities.<sup>2</sup>

During OSPI's investigation, the District clarified the nature of the Student's time in a general education math class:

[General education] math is twice a week working on [an] app during independent work time in the fourth grade classroom. The student is progressing through the app slowly because he needs multiple prompts (more than 5 and less than 50) to stay on task.

[But all] SDI occurred in his Structured Classroom. In [the] *general education setting*, the Student was working on math independently with an iPad, as were all the other general education students in that class.

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<sup>2</sup> In additional information, the District stated an administration of "the CTONI was attempted." The November 2023 evaluation report read, in part, "Student walked to the evaluation room with the evaluator. He took the seat directed. He was not able to sustain joint attention nor was he able to point to choose a picture to complete the test grid to complete the nonverbal evaluation tool. The Developmental Profile 4th Edition ratings from January, 2023, are considered and accurate assessment for his cognitive/academic abilities at this time."

The Student began [attending some time in a] general [education] math [class] on October 18th and is currently still attending with the fourth grade classrooms twice a week.

20. The Parent's complaint request read, in part:

[Student was] placed in the wrong type of classroom...In a structured [general education] classroom, [Student] has no behaviors. [Student was] classified [as qualifying for special education under the category of] developmental delay, [there was] not [an] autism diagnosis on [the Student's] IEP, [but Student was] placed in a class for autistic children. [Student is] non-verbal [but the District does not have a] program to help [address the Student's needs in this area].

...

[The Student's] IEP states Parent wants Student in [a] *general education setting*, but [the District has made] no efforts [in this regard].

[Student needs a] 1:1 [paraeducator] at all times [for] inclusion in [the] *general education [setting]*...[And Student requires a] speech device [and a speech] reevaluation [should be conducted] if [the] current [evaluation report] is not working.

21. In an email thread dated September 17, 2023 that included the principal, the Parent expressed her opinion that the Student needed to be "in the *general education setting* with a 1:1 ASAP."

22. On September 20, 2023, the Parent sent the principal her notes following an earlier conversation with the principal. In a subsequent email, the principal wrote, "This looks like a faithful rendering of what we discussed." According to the Parent's meeting recap notes:

- "At school, an iPad will be designated for [Student's use] for [the TD snap communication] app<sup>3</sup> and then a separate iPad for any academic work."
- At the upcoming October 13, 2023 IEP meeting, the IEP team would discuss the Parent's request that the Student be provided with a 1:1 paraeducator and that Student have greater access to the *general education setting*.

23. According to an email thread, dated September 21-22, 2023, between District staff members, District IEP team members were open to increasing the Student's time in the *general education setting*, but the IEP team needed to have a conversation regarding the proper "general education teacher to include in the planning of integrating Student into a *general education setting*."

24. According to emails, on or about October 6, 2023, the Parent conducted a "classroom observation." The Parent's post-observation email read, in part:

Student was however wearing his headphones [in his gen ed art class] which I was concerned about. Student does not need them. We have been to [places] where crowds have been very loud with no noise concerns. When I questioned why he was wearing them

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<sup>3</sup> According to the Parent, prior to September 20, 2023, "Student had no way of communicating on a regular basis. This program was introduced by the staff for the school year of 2022 but not implemented daily. This program is an app that can be downloaded onto an Ipad that has icons/pictures of his favorite things or many common topics he would face on a daily basis. Student can press the image and it will say the description out loud in hopes that the repetition may encourage him to use his words or allow him to communicate if he were to have a medical emergency such as breaking his arm at school."

the para stated it was at the request of the parents which was not true. The reason why I think it is not a good idea, besides him not needing them, is that others may not try to talk to him because he cannot hear well, it immediately sets him apart from the class and I do not think he can hear direction well. I voiced this to the paras and it sounds like they will be changing that next week.

...

I was told that his iPad for...snap communication device had a glitch and they sent it in for repairs yesterday and would get it back possibly today or at the latest on Monday the 9th.

...

As you can see in the almost 3 hours I was there, nothing academically was accomplished. I think this is unacceptable.

Student is eager to learn with no behaviors but since he is not being pushed and [is currently placed] in an environment where it is not demanded [and] he is [therefore] not progressing. I do not think this classroom is a good fit for him any longer.

...

I have been very clear that I would like a one-on-one for him, but now I think that has changed based on my observation. I think we need to eval a different program for him with a one-on-one. We can discuss this more at the IEP meeting.

Later that day, the principal responded, stating, in part:

I actually had similar comments along with suggestions about them from our teacher on special assignment [TOSA] who was present today. In the absence of the special education teacher [TOSA] has been a godsend helping with structures and ideas. She mentioned to me your discussion with her about a possible different placement and I certainly understand. I'm happy to be a part of the continued discussions.

There were several contextual things that impacted the Student's day today, but I don't want to go into those here because I feel like it would be trying to explain away what you saw. I do want you to know though that several of the things that went on today are not the way the team wants them to go moving forward.

25. In an October 7, 2023 email to the director, the special education teacher provided some background on the Parent's observations, "The reason the Student's schedule did not have academic in the morning was that it was the trade off for Student to be integrated into the *general education setting*. If he goes to specialist with his fourth-grade class then that time is at 8:10 AM."

In a separate October 7, 2023 email to the principal, the special education teacher stated:

Although I didn't articulate this to Parent, I did notice that many of the students are focusing on adaptive skills with a strong connection to behavior which cause the paras to focus on that. Student doesn't have the same struggles. It may have been very disruptive to have strangers observing which could also have set his peers off.

26. In an October 10, 2023 email to the director, the Parent asked, "what other type of [program settings and/or placements] can Student be in?" The Parent further stated she did not think enough academic work was taking place in the Student's current program and that "the goal would be eventually [a] *general education [setting]* but that is too big of a step at this time."

27. The District's response included progress reporting related to the January 2023 IEP. It was dated October 12, 2023. It showed, in part, that the Student was demonstrating emerging skill levels in adaptive, social emotional, and all cognitive areas.

28. The Student's IEP team met on October 13, 2023. The District's response included a prior written notice, dated October 13, 2023, later amended per Parent feedback provided on October 17, 2023. The PWN read, in part:

Description of the proposed or refused action:

Student's parents are concerned that his current program is not meeting his needs academically and socially, and that more inclusion in a general education setting will provide a model that will help Student improve in adaptive and academic skills.

...

The team will keep Student's current service minutes and update the IEP at the IEP team meeting that will occur after the re-evaluation meeting. The team determined that a reevaluation will be necessary to inform the IEP and service minutes that best fit Student's needs. Student will be included in *general educational settings* and data will be taken to determine the effectiveness of this time with his gen ed peers as well as his ability to access curricula while in a classroom with his general education peers.

...

Any other factors that are relevant to the action:

Student will continue being integrated into a specialist setting with his general education peers. His schedule will further be changed to include more time in the general education classroom setting. Appropriate tests to be completed for updating a reevaluation were discussed and a consent to evaluate was signed. The team agreed that Student would not wear headphones unless he was working on the computer and needed them. Additionally, Student has an updated communication app on his iPad so he will be allowed to use assistive technology with a speech-to-text accommodations until his IEP has been redone after this current reevaluation is completed.

...

[The earlier draft of this prior written notice] has been revised to include that information [in part]:

1. The building principal committed to having a conversation with the assigned general education teacher and that the start date for agreed upon inclusion in the *general education setting* would start on 10/19/2023.

...

4. The team discussed gathering data between the dates of 10/16/23 and 11/15/23 to inform the reevaluation. The reevaluation meeting was scheduled during this meeting for 11/16/23. Some of the data that will be collected will include time on task data sheets, work samples and curriculum based assessments.

5. Prior to the meeting, the school psychologist sent home a copy of a questionnaire for parent input on assessments to be given to inform the creation of the reevaluation assessment.

...

7. Parent gave a copy of the 2018 diagnosis of autism testing results that were done by the University of Washington to the building principal and school psychologist.

29. In relation to the Student's time in the general education dance and art classes, a District staff person that worked with the Student stated, in part:

When the Student is told that it's time to go out of the classroom, he can walk to the next area. In the general education setting when other children try to engage him he doesn't respond or interact with them. In general education settings he needs multiple prompts (more than 5 than 50) to do what is expected.

I have been with him for a year and half and I notice that he's more emotional this year compared to last year.

A change in behavior has been noted during this time. When asked to pay attention or to do his work he points his finger at the adult and tells the adult no. Sometimes he will lightly slap the adult that's trying to prompt or correct him. If the adult tells him that's not ok, he starts crying.

30. On October 13, 2023, the IEP team agreed to initiate a reevaluation of the Student.

31. On October 16, 2023, the Parent was invited to attend a November 16, 2023 meeting to "review evaluation reports."

32. An October 19, 2023 email from the Parent referenced the Student having spent some time in the *general education setting* on October 17, 2023.

33. A reevaluation meeting was held on November 16, 2023. The November 2023 reevaluation report included, in part:

- Evaluative Summary: "Student's developmental disability...affects his cognition, verbal and nonverbal communication and social/adaptive interactions, and inhibits his academic progress. Specifically, his disability adversely affects his capacity to approach and form relationships with peers, pick up on nuanced social cues, perceive what others are feeling, manage feelings of frustration, be flexible and adaptable when faced with changes in routine and make adequate academic practice."
- Social-Emotional – BASC-3: "Parent reports concerns in social development disorder, executive functioning, and resiliency, resulting in a rating of clinically significant functional impairments. Special education teacher reports concerns in [the same areas, with the same conclusion]."
- Adaptive – ABAS-3: Student had a "general adaptive composite [score] in the extremely low range", with a recommendation that "areas of focus...include self-direction, independent leisure activities, and self-care."
- Cognitive: The November 2023 reevaluation adopted the results of the January 2023 Developmental Profile 4<sup>th</sup> Edition, which found, in part: "Student is able to look for a toy that has been hidden or concealed, point to an object in a magazine upon request, correctly classify items (size, color), sort things by color or size. He is not yet able to understand the concept of under/over/through, or the difference between living and unliving things...Student continues to demonstrate cognitive functioning beyond [minus 2 standard deviations] below that of his peers."
- Academic Skills: These "were assessed based on his performance using classroom-based activities." Reading recommendations included: "that letter sound errors be corrected to remove the 'uh' to support accurate blending of cvc words, continue to learn sight words, use texts created with a high number of sight words and...continue with the use of predictive texts." Writing recommendations included: "Student write both his first and last names...that Student be encouraged to copy a sentence from a text he has read to encourage sentence writing."

Math recommendations included: "Student work on addition and subtraction facts to and from 19, counting up and down within 100 to solidify his number sense, and begin double digit addition without regrouping and place value to 100."

- Communication: "Student [should] continue [with] a communication goal for expressive language skills in making requests, as well as utilizing total communication (the form of communication most accessible to him) for a variety of the 6 communicative functions of AAC...By modeling the use of AAC/verbal speech for all these functions, we will encourage Student to produce unique, organic, and independent utterances."
- Fine Motor: The School Factor Assessment (SFA) was administered and it was determined "Student...exhibits behaviors that fluctuate throughout the quadrants of avoiding and registration. Student is experiencing sensory stimuli in a way that impacts him more than the typical Student."
- Observation:
  - "Student was working 1:1 with a paraprofessional, completing academic tasks from a work bin, such as name writing, days of the week tracing sheet, letter writing, predictable text booklets, and counting activities." In such an instructional format, Student was able to maintain "active engagement" 41% of the time, "passive engagement" 37% of the time, and "off task" behaviors 22% of the time.
  - Music Class: "Student would stare around or attempt to get up and wander unless an adult was giving him direct verbal and physical cues of the class time. It was noted that Student would answer direct questions from adults with one or two word responses and did not initiate any verbal conversation."
  - General Education Environment for Independent Math iPad Work: "For the first 15 minutes, Student was engaged and interacting with the program. There were 5 instances where the paraeducator would cue him to refocus by tapping her finger on the table above the iPad in Student's line of sight."

34. During OSPI's investigation, the District clarified, "the Student's placement was not changed at the [November 16, 2023] reevaluation meeting." According to the District, the IEP team is scheduled to meet on December 14, 2023.

## **CONCLUSIONS**

**Issue 1: Least Restrictive Environment** – The Parent alleged that beginning October 11, 2022, the District did not follow proper procedures for determining the Student's least restrictive environment.

School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a

placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and the cost of mainstreaming the student in a general education classroom.

Additionally, an IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability.

Chronological History: Here, relevant chronology regarding the Student's LRE is as follows. The January 2022 IEP stated the Student would be educated in the general education setting for 6.3% of the school week. The January 2023 IEP stated the Student would be educated in the general education setting for 0.82% of the school week. The January 2023 IEP provided the Student with an additional hour of instruction in a special education setting, thus accounting for the approximately 5% reduction of weekly time in a general education setting.

While documentation shows the Parent was always desirous of the Student being educated in general education settings to the maximum extent possible, this first became a notable concern for the Parent at the beginning of the 2023–24 school year.<sup>4</sup>

According to the District, during the 2023–24 school year, the Student was placed in a "Structured Program, a self-contained program within the District for students whose primary disability is social-emotional disabilities, but who also have high cognitive and adaptive needs." During the 2023–24 school year, the Student's involvement with general education settings consisted of attending general education music and dance classes<sup>5</sup> and working on a math-related computer application while in the presence of general education students.<sup>6</sup>

A reevaluation meeting was held on November 16, 2023. The Student's placement was not changed as a result of that meeting. And the IEP team is scheduled to meet on December 14, 2023.

Information on Student's Needs Resulting from the Student's Disability: Here, various evaluations and IEPs showed the Student demonstrated significant needs resulting from the Student's disability prior to the 2023–24 school year, particularly in the areas of communication, adaptive,

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<sup>4</sup> Compare the January 20, 2023 prior written notice with the Parent's emails of August 31, 2023, September 17, 2023, and October 10, 2023.

<sup>5</sup> Upon knowledge and belief, this was not an intervention that was attempted in response to the Parent's concerns that the Student needed increased time in general education settings. Rather, based on the documentation, it appears the Student's intended schedule always called for general education dance and music classes.

<sup>6</sup> For example, the District explained that all math "SDI [took place] in [the] Structured Classroom", but, in partial response to the Parent's concerns, in fall 2023, the Student began "independently [working through a math-related] iPad [application in a general education] fourth grade classroom," wherein "all the other general education students in that class" also worked on math work independently.

social emotional, and academics. See the 2018 psychological evaluation, the May 2020 evaluation, the February 2021 assessment revision, and the January 2022 IEP.

Importantly, data related to fall 2023 showed the Student continued to demonstrate significant needs resulting from the Student's disability. Staff noted the Student seemed "lost" or "disengaged" when placed with general education peers, including for specialist time, and the June and October 2023 progress reporting showed the Student made little progress on his goals. In addition, the November 2023 reevaluation report showed the Student continued to have significant needs in the areas of communication, adaptive, social emotional, and academics.

Based on the foregoing, OSPI determines the Student's IEP team did take proper steps to gather sufficient, relevant data on the Student's needs resulting from the Student's disability. The IEP team also took steps to explore increasing the amount of time the Student spent in a general education setting. And the IEP team continued to gather information and data, and engage in IEP team discussions about the Student's placement. This information supported the IEP's least restrictive environment determinations from October 11, 2022 through the present. OSPI does not find a violation of least restrictive environment procedures.

Still, OSPI notes the following: neither the January 2022 IEP nor the January 2023 IEP explicitly provided the Student with paraeducator support, either shared paraeducator support or 1:1 paraeducator support. In fact, it appears one of the principal interventions the IEP team provided the Student in fall 2023—in relation to the issue of the proper least restrictive environment for the Student—was the provision of intermittent 1:1 paraeducator support. The Parent also requested 1:1 paraeducator support and it is not clear the IEP team specifically addressed this request. In addition, given that the Parent continued to advocate for more inclusion in general education and shared that the Student was receiving ABA therapy, OSPI encourages the IEP team to consider, at the December 14, 2023 IEP meeting, whether the IEP should specifically include paraeducator support, ABA type services and supports, or other services and supports for the Student.<sup>7</sup>

**Issue 2: IEP Implementation** – The Parent alleged the District did not follow proper procedures for implementing the SLP provisions in the Student's IEP between October 11, 2022 and the end of March 2023.

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

Here, the Student's January 2022 and 2023 IEPs provided the Student with the following specially designed instruction: communication – 30 minutes weekly (to be provided by an SLP). From October 11, 2022 through approximately January 17, 2023, the District did not provide the Student

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<sup>7</sup> OSPI reminds the Student's team of this resource regarding paraeducator support: [https://ospi.k12.wa.us/sites/default/files/2022-12/tap\\_6.pdf](https://ospi.k12.wa.us/sites/default/files/2022-12/tap_6.pdf)



with the SLP services in his IEPs, the District did not have a contract with a virtual SLP during that time period. According to emails, beginning on or about January 17, 2023, the District did provide the Student with the SLP services in his IEP, on or about that date, the District did have a contract with a virtual SLP to provide the Student IEP services.<sup>8</sup>

Here, October 11, 2022 through January 17, 2023 represents approximately 11 weeks of instruction. During this time, then, the Student should have received approximately 5.5 hours of instruction. Accordingly, some compensatory education is warranted.

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 statutory or regulatory formula for calculating compensatory remedies.

Mid-January 2023 progress reporting showed the Student made little-to-no progress on his communication goals as of that date; in other words, the lack of SLP instruction between October 11, 2022 through January 17, 2023 impacted the Student.

As compensatory education, the District will be required to provide the Student with 5.5 hours of compensatory SLP instruction.

### **CORRECTIVE ACTIONS**

By or before **January 12, 2024** and **February 23, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **January 12, 2024**, the District and Parent will develop a schedule for 5.5 hours of compensatory education in speech/communication.

Unless otherwise agreed to by the District and Parent, services will be provided by an SLP. Services will be provided in a 1:1 setting. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **January 12, 2024**.

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<sup>8</sup> Of additional relevant to this conclusion is the following: (1) both the Parent and District agreed the Student began to receive SLP services in accordance with his IEP beginning in January 2023; and (2) February 27 through June 12, 2023 represents approximately 15 weeks of instruction, meaning the Student should have been provided approximately 7.5 hours of SLP instruction, and during this time period, the Student was provided with approximately 6 hours of SLP instruction. (The Student was absent during at least one regularly scheduled SLP session in spring 2023.)

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **February 23, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **February 23, 2024**, 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 **February 23, 2024**.

**DISTRICT SPECIFIC:**

None.

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 7th day of December, 2023

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

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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