

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-27**

### **PROCEDURAL HISTORY**

On February 26, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a deaf/hard of hearing (DHH) specialist (Complainant) related to students (Students) attending the Auburn School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding three Students.

On February 26, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 28, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On March 15, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. OSPI invited the Complainant to reply.

On March 28, 2024, OSPI requested that the District provide additional information regarding Student 3, and the District provided the requested information on March 29, 2024. OSPI forwarded the information to the Complainant and the Parent of Student 3 on April 8, 2024.

On April 2, 2024, the Complainant provided OSPI with her reply. OSPI forwarded the reply to the District on April 3, 2024.

On April 8, 2024, requested the District provide additional information, and the District provided said information on April 10, 2024. OSPI forwarded that information to the Complainant on April 18, 2024. (During the initial stages of this investigation, the Complainant shared releases signed by the Parents of each of the three Students, permitting OSPI to share information received from the District regarding the Students with the Complainant.)

On April 15, 2024, OSPI's investigator consulted with an OSPI program improvement team member with educational and professional experience in the area of students who are deaf and hard of hearing.

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

### **ISSUES**

#### Student 1

1. Beginning with fall 2023, did the District follow proper procedures for implementing any IEP provisions related to "real-time transcription services"?
2. Beginning December 2023, did the District follow proper IEP development procedures in responding to any potential change in need resulting from the Student's disability in the area of hearing?

### Student 2

1. In fall 2023, did the District follow proper IEP development procedures in responding to any potential change in need resulting from the Student's disability in relation to "transliteration" services?
2. Were proper procedures followed under WAC 392-172A-03020 in relation to the October 2023 reevaluation of the Student? Specifically, were those portions of the reevaluation that related to potential hearing needs sufficiently comprehensive, completed by qualified professionals, and technically sound and reliable?

### Student 3

1. Beginning fall 2023, did the District follow proper special education child find procedures?

## **LEGAL STANDARDS**

IEP Implementation: A district must also ensure it provides all services in a student's individualized education program (IEP), consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F.3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education 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, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). Compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1st Cir. 2003).

"There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the language needs of a student with limited language proficiency; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110.

Basis for IEP Team Decisions: 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.

Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 34 CFR §300.300(a); WAC 392-172A-03000(1). Once the need for an evaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

Initial Evaluation Timelines: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent or such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline. WAC 392-172A-03005(3).

### **FINDINGS OF FACT: STUDENT 1**

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of hard of hearing, was in the seventh grade, attended a District middle school, and the Student's June 2023 IEP amendment was in effect.

According to the District, "prior to the January 23, 2024 IEP, live transcription services were not a service on the IEP."

The June 2023 amended IEP provided Student 1 with the following specially designed instruction in a special education setting until February 15, 2024: 60 minutes a month of deaf and hard of hearing support, to be provided by a teacher of the deaf and hard of hearing.

The June 2023 amended IEP included the following annual goal for Student 1: self-advocacy:

By 02/15/2024, when given 20 samples of Health Medical, Hearing Technology and Use, Educational Services/Communication Access (SASE-ES) Student 1 will identify, describe, and explain why they are important as they relate to hers and others with hearing loss improving her ability to advocate for her own specific needs from 60% to 80% as measured by Survey Checklist and activity documents in student/teacher made portfolio (Google Classroom).

2. According to the Complainant, on November 1, 2023, Student 1 related the FM/DM system the District provided "did help with some 'lecture' environments but did not always sound right", that Student 1 was not being provided "notes", and consequently, Student 1 had to "try to get visual access to teachers talking and take notes while 'listening' as much as possible."

In her reply, the Complainant stated:

There were delays in assessment completion [following my inquiry regarding a potential need for transcription] because of early release, middle school conferences, etc. The initial emails [by me to District leadership] specifically request [transcription] service as potentially all classes or some as needed. It was not for one class each day.

3. According to the Complainant, on or about November 2, 2023, the Complainant discussed providing the Student with the "accommodation" of "transcription support through Microsoft PowerPoint", but after Student 1 utilized it for some time period, said program actually "severely reduced accessibility, as the accuracy was 43%", and furthermore, said program did not "provide...post-it notes [as was required by the Student's] IEP."
4. According to the District, between December 2023 and mid-January 2024, "the Complainant's characterization and that of the District's audiologist [regarding the Student's auditory needs] were...significantly different from one another."
5. Progress reporting data related to the June 2023 amended IEP goal, dated December 6, 2023, stated Student 1 was "approaching [the] goal target."
6. On December 15, 2023, the Complainant emailed the assistant special education director (assistant director), stating, in part:

The...team for Student 1 is gathering a little early, in January, prior to her IEP review due date in February. Student 1 and her mother have expressed concerns about some challenges she is having with certain content classes. She is a very high achiever and gets good grades because of her hard work production but she is showing a discrepancy between the grades and her state/district, etc., scores. Student 1 and mom have asked about tutoring and transcription services.

The team will be meeting to discuss options that are available. If the team decides Student 1 is a good candidate for transcription services in some, or all, of her classes how do you want us to proceed with that process?

Later that day, the assistant director responded, stating, in part:

I recall that Student 1 was a student for whom her eligibility for sped was very borderline. The provision of high cost 1:1 services to such a high achieving student is counterintuitive, so it will definitely require more conversation prior to your convening her IEP team.

I am going to invite you to a building support meeting with the special education leadership team [in early January 2024]. That will be a chance to express why you believe this level of support is necessary for FAPE for Student 1. This will guide the level of resources the district rep on her IEP team will be able to authorize.

I recall that Student 1 opts not to use a DM system by her own choice. It's not uncommon for students to prefer not to use DM, and some do make that choice – but that doesn't necessarily mean they get their pick of other more expensive options as an alternative.

Student 1's functional listening assessment [administered as part of the February 2023 reevaluation] (using hearing aids, not relying on DM) showed almost 100% access to speech, even in noisy environments typical of a classroom. So if the problem we are addressing is not access to communication, I'm unsure what transcription would accomplish for her.

7. According to the District, during a January 11, 2024 meeting<sup>1</sup>:

Complainant portrayed a significant concern about Student 1's current hearing status as a result of a temporary impact stemming from a recent surgery that Student 1 had. Complainant requested that live transcription services be offered, in recognition both of the impact of the recent surgery, and because of the specific acoustic characteristics of that particular class and teacher's voice.

However, the district audiologist was unfortunately unable to attend, and no updated hearing data was available to summarize the scope of the issue, [so] the leadership team requested follow-up data be gathered by the District audiologist.

8. According to the Complainant, during the January 11, 2024 meeting, in relation to the Student's auditory needs, the conversation centered on "test anxiety; science teacher talking too fast; Student not using FM/DM microphone; high production functioning student; [and] Student in 'co-teaching' environment." According to the Complainant, "Also discussed was the fact that Student [was] currently having difficulty related to ear construction surgery in one ear and that there would be another [surgery] soon, meaning both ears would be impacted...The Guidance Team determined Student needs transcription services."

---

<sup>1</sup> According to the District, "The building support process is not intended for parents. The parent did not attend nor was the parent invited to attend the building support meeting on January 11, 2024. This was not an IEP meeting and IEP decisions were not made at this meeting. The building support process is intended to support teams and district representatives to be prepared to respond to either high cost or highly restrictive requests in an IEP meeting, this process allows staff to share their reasoning for anticipated requests and garner support for potential requests brought by the IEP team."

During OSPI's investigation of this community complaint, the Complainant provided, in part, the following statement:

My [position at the January 11, 2024 meeting was that the] FLE represents the words the student can 'hear' but not the comprehension in a classroom-like environment. Surgery and [bone anchored hearing aid] BAHA access, while urgent, changed variable dynamics for a short time, not the ultimate need for ongoing transcription services as requested.

9. According to the Complainant, on January 11, 2024, she "learned that Student was unable to adequately use her bone anchored hearing aid (BAHA) [in her left ear] because of [the] surgery [she had in November 2024]" and that she "would have a problem with both ears very soon – within the next month or so." And that certain District staff believed the team needed to "investigate and get further 'data'" on this matter.

10. Also, on January 11, 2024, the assistant director emailed a "leadership team" related to Student 1, stating, in part:

[Complainant] is wanting to explore whether a student with hearing loss has a need for a 1:1 support person to transcribe audio to written text for her, to support her access to instruction. Student 1 is a 7th grader, who in early elementary we had placed in a DHH program in [a different] school district, until 2 years ago when they determined she no longer needed that level of support. They actually considered exiting her from special ed entirely, but left that decision up to us.

We did an eval here 1 year ago, and the team decided to make her eligible for SDI from the teacher-of-the-deaf only, to work on self-advocacy, no academic or other services remain. [At that time – February 2023], the audiologist concluded that Student 1 has no need for audiology support either, as her hearing aids are so highly effective for her that she has opted not to use her FM system anymore. The audiologist also noted she has excellent listening ability using the hearing aids, even in the presence of noise and across distance, and that she is able to hear as effectively as her typical hearing peers.

It looks like Student 1 is struggling in Science this quarter (C+), but otherwise has a history of straight-As.

11. On or about January 11, 2024, the director provided the Complainant, the principal, and the audiologist a memo regarding Student 1. It read, in part:

Met with teachers yesterday because [Student 1] reported a couple of weeks ago that she was having trouble with classes and having difficulty hearing things.

Parent sent email to team asking why there is a discrepancy between grades and this year and last year's testing - unsure which testing she was referring to.

...

One [classroom teacher] reported that the classroom is loud and he talks fast - this is the class that she's struggling with most (Science, student getting B+).

...

Can no longer use hearing device on one of her ears due to surgery, won't be able to use until they do the other ear and abutments are implanted.

...

The audiologist recently provided input that Student should be able to hear, but has not had communication with the medical provider.

Student reports that she's never been able to hear what others in the class are saying – can hook up device via Bluetooth with the Chromebook.

Belief that transcription services would be required in science class - teacher's voice doesn't fit in her range.

...

Your recommendation for transcription services for [Student 1's] science class is supported. This service is necessary for [Student 1], as a temporary measure resulting from her recent and upcoming surgeries, and the unique challenges with her science class.

12. On January 12, 2024, the Complainant emailed several District staff, stating, in part: I got an email verification from [Student 1's] mother that [Student 1] is hearing considerably less in one ear (left) and having to make extra modifications during classes in attempts to get auditory information. Mom also asked again about transcription and when that can start.

The District audiologist has verified that she will be checking more deeply into her functional listening at this time and will be getting more information from Children's regarding the surgery timelines and possible 'other' ideas for hearing aid placement for better hearing access.

In the foregoing email, the Complainant stated Student 1 was "an excellent candidate for transcription services."

13. On January 12, 2024, the team canceled a scheduled meeting, as the team wanted to be able to review the information gathered by the District audiologist prior to any such meeting.

14. On January 19, 2024, the District audiologist emailed several District staff, stating, in part: I finished up testing yesterday and had a chance to connect with [Student 1's] clinical audiologist at [the] Children's [hospital].

So it does look like [Student 1's] recent surgery on her left ear is forcing her to wear her hearing aid...in a different location than she is used to, ultimately causing functional decrease in hearing on that left side. Prior to surgery, her Functional Listening Evaluation (FLE), on 2/9/23, indicated excellent hearing scores across all conditions (in background noise, across far distances, with/without visual cues)...This week when testing the FLE again (1/16/24), with Student 1 wearing her [hearing aid] in the post-surgery locations, she is having significant trouble hearing when having to listen across distance and in background noise.

...

She is hearing very well and is able to repeat the words confidently when using the teacher's FM remote microphone in the noise and distance condition...Unfortunately, she is very reluctant to use the teacher's microphone, as she is shy and does not want to bring attention to herself. In the past, she could get away without using the FM mic because she was hearing very well without it even in the most challenging conditions (per FLE scores in 2/23). I am encouraging Student 1 to try to use the FM mic 'temporarily' while she is

experiencing decreased hearing during the reconstruction surgeries on both sides, until she can get permanently implanted with the [hearing aids] (scheduled approximately at the end of this year).

Student 1 is scheduled for her second surgery...but on her right ear next month. This is concerning because she is [currently] hearing less from her left side...right ear will be in the same situation after surgery next month...[Student 1] will be essentially having a 'unilateral' hearing loss during these stages of surgeries...

...

I do believe that transcription would be helpful to Student 1 during this time along with the use of the FM mic (if she will use it—still working on this).

15. Progress reporting data related to the June 2023 amended IEP goal, dated January 23, 2024, stated Student 1 was "approaching [the] goal target."

16. A new IEP for Student 1 was developed on January 23, 2024. It read, in part:

Student 1 has a documented, long-term, hearing loss that has an impact on how she learns and communicates. She has used sign language and currently communicates using English speech. She reports challenges in accessing auditorily presented information in some of her educational environments...Student 1 is provided access to a personal and district FM/DM system, other presentation accommodations, and real-time transcription services in one of her classes all as described in this IEP.

...

**Medical-Physical...Audiological...Review:**...With this amount of hearing loss Student 1 will not be able to hear normal conversation volume levels without her hearing devices. Even with her devices on hearing speech clearly in challenging situations (e.g. across distances and in noisy environments) is typically difficult with this degree of loss.

...

**Deaf and Hard of Hearing**...Student 1 came from an environment that provided a lot of support (DHH setting)...Can no longer use hearing device on one of her ears due to surgery, won't be able to use until they do the other ear and abutments are implanted...Student reports that she's never been able to hear what others in the class are saying - can hook up device via bluetooth with the Chromebook... Belief that transcription services would be required in science class - teacher's voice doesn't fit in her range.

Your recommendation for transcription services for Student 1's science class is supported. This service is necessary for Student 1, as a temporary measure resulting from her recent and upcoming surgeries, and the unique challenges with her science class. In implementing this service, please note the following...This is a trial of a brand new support, she may or may not end up needing it. Please follow up with Student 1 on the status of her upcoming surgery. When her hearing returns to its prior level, we anticipate not needing the same level of support...Add the transcription service on a temporary basis for the subject area of Science with ongoing measurement of service effectiveness for the student.

...

Student 1 recently had reconstructive surgery on 11/14/23 on her left ear...This was the first of 4 stages scheduled for Student 1...Her second surgery is scheduled for February 2024...Student 1 returned to wearing [hearing aid] but reports that recent surgery on her left ear is forcing her to wear her hearing aid...in a different location than she is used to, ultimately causing functional decrease in hearing on that left side. Student 1 reports that



she 'can hear fine, but not fully [on that left side]' and notices significant decrease in hearing in left ear when compared to pre-surgery levels. Mom also reports noticing hearing decrease from Student 1 at home. Student 1 reports no concerns with hearing in the classroom, however. Her teachers in her noisier classrooms are using classroom integrated sound field speaker systems, improving the signal-to-noise ratio when hearing instruction. She has access to a remote microphone/DM system to access her computerized testing if needed. She remains reluctant to use the remote microphone (has not used mic for several years and reports discomfort with approaching teachers regarding the use of the mic) but is more open to trying a trial with transcription services. Student 1 and mom reports feeling frustration and cognitive fatigue in trying to listen with the decreased hearing on the left side and express worry about the addition to having surgery (and potential decrease in functional hearing) on the other (right) side next month.

**Functional Listening Evaluation...**Prior to surgery (2/9/23), her FLE indicated excellent hearing scores across all conditions (in background noise, across far distances, with/without visual cues) with her [hearing aid], even without the accommodation of a remote microphone. However, with recent testing post-surgery (1/16/24),...Student 1's FLE scores indicated significant difficulty hearing when having to listen across distance and in background noise. When adding the DM remote microphone, Student 1 scored significantly better (excellent scores, similar to pre-surgery) and was able to repeat the words confidently in the noise and distance condition.

...

Without her amplification devices Student 1 would not be able to hear speech unless it was extremely loud and would miss almost all that is said at normal conversational volume levels...Student 1 will likely have continued decreased functional hearing through the stages of surgery, ...

The January 2024 IEP included, in part, the following annual goal:

By 01/22/2025, when given before and after observation of transcription comparisons during class (science or other) Student 1 will establish a checklist of ten projected pros and ten cons regarding transcription in her class and the post-test observation results after each week of trial improving her ability to self-access accommodation support viability of transcription services in this educational environment from 0% to 100% as measured by teacher and student developed charts and graphs in portfolio.

The January 2024 IEP included, in part, the following accommodations: closed captioning and transcription services in science class and activities.

The January 2024 IEP provided Student 1, in part, with one hour each month of SDI in deaf and hard of hearing.

17. According to the Complainant, on or about January 22, 2024, "Student Support Services [determined it] would provide Student with a transcriber [for] 1 class [period] per day [even though] the IEP decision [had been to provide Student with this service] for all periods of the day on a trial basis", and the Complainant was told, to the extent the Student's IEP was to be amended to reflect the (potentially) temporary provision of a transcriber to the Student, that the IEP should state this service was being provided "as a 'trial' [intervention]."

18. According to the District:

Between the dates of 1.24.24 and 2.28.24 the following steps [regarding Student 1's access to transcription services] took place: Contact with Typewell agency; Understanding of the service provided, exploration of technology required, cost estimates and compatibility of software to microphones; Test run with chromebook/microphone and Typewell service; Notification of formal compatibility verification requirement and student privacy agreement; and, Data sharing agreement discussed, drafted and signed.

In her reply, the Complainant wrote, "after some time the 'Typewell' meaning-for-meaning was preferred by Student 1 and her ability to access notes was a big plus according to her."

19. According to the Complainant, on or about January 31, 2024, "Complainant was informed by Student that she would be out of school for the next couple of weeks because of her second surgery and she was very concerned that she would not be able to have access to sound during classes upon her return", and the Complainant and Parent again advocated for increased transcription services to be provided to Student.

20. On January 31, 2024, the Complainant emailed the assistant director and the audiologist, stating, in part:

The last I had heard was the next stage of surgery would be later in March or April...She said that she will probably NOT be able to hear with either ear for a period of time after returning from surgery...Even with that there will be healing time before she would be able to use the bone-anchored hearing aid. She said that having transcription services in one class would be great but not having something to support during other classes would make it very difficult.

...

I recommend the District reconsider the potential of providing transcription services for all her classes. Even if it's a trial situation it will provide access to the educational environment that she will not have at least for the time between surgery and eventual use of bone-anchored hearing aids. Also, I would like to get it set up with Typewell systems prior to her return to school so it will be quick training, start-up ready.

On January 31, 2024, the Complainant forwarded a request from the Parent to District leadership, wherein the Parent requested transcription services in all classes.

21. In its response, the District wrote:

[The] level of need/concern [mentioned in Complainant's January 31, 2024 email] had not been discussed previously, but again the Assistant Director scheduled a second building support conversation for 2.15.24. On 2.6.24 notification was received via email from the District leave specialist of Complainant's extended absence, anticipated from 2.4.24-3.4.24. On February 20, 2024, an updated email was received with a return-to-work date [for Complainant] of 2.26.24...The building support conversation was canceled due to Complainant's absence.

22. In a February 1, 2024 email exchange, the assistant director wrote, in part:

We made a decision about the level of support based on the information you presented 3 weeks ago (and the follow up information gathered).

...

Our most recent assessment of Student 1's status was summarized in an email from the audiologist on 1/19, which combined both a summary of information she learned from Student 1's audiologist at Children's, and a new FLE.

The Complainant wrote, in part:

The impact is that she will not be able to use hearing devices after next week...for potentially an extended period of time...Student 1 will not be able to access sound using hearing aids or FM or anything via the auditory system. Or rather, she will have greatly reduced access to sound, and it cannot be amplified to meet her needs.

The audiologist wrote, in part, "I have reached out to the children's [hospital's] audiologist today to get more information. Have yet to hear back. Will inquire about surgery timeline, post-Feb surgery plan re: hearing aid use, possible change in the BAHA band to try different placement."

23. According to the District, the Student was absent from February 3 through February 25, 2024, due to surgery.
24. According to the Complainant, on or about February 12, 2024, the Student's Parent emailed District staff, stating, "Student wanted to come back to school a little early and wanted to know if the transcription services were set up."
25. According to the Complainant, "an email [dated] February 19, 2024 stated [transcription] services [would be provided to Student] for one class per day, starting February 26, 2024."
26. According to the Complainant, as of February 26, 2024, "to my knowledge, Student has [been provided with] no transcription services, despite the [earlier] IEP team decision [that Student required the same]."
27. The District's response read, in part:

The District's audiologist reported in a verbal conversation with the assistant director on 2.26.24, that her conversation with the outside audiologist left her feeling optimistic. While a significant impact was still expected, it was not to the extent that Complainant had expressed concern for. In short, the expectation was that the student would retain her same hearing as before the surgery in at least one ear at a time, with no period of time where neither ear was functional.
28. According to the District and contemporaneous emails, transcription "service provision began on February 28, 2024", during science class.
29. On March 1, 2024, the assistant director emailed the Complainant, stating, in part:

I'm concerned about what you said about Student 1's hearing status [when you recently observed that she was unresponsive to a teacher's instruction in a particular class].

I spoke to [the District audiologist]...earlier this week about this topic, and her summary was very different from yours. She noted that Student 1's current clinician at Children's does

not anticipate an impact to both ears simultaneously. They did find that Student 1 was wearing an inappropriate headband...which made correct placement of the [hearing device] impossible...This was a problem, however, they were able to solve it using a more appropriate headband, so her hearing should now be similar to how it was pre-surgery. Your observation on Wednesday makes me wonder if perhaps she is wearing the [headband] incorrectly again...or perhaps, she was just ignoring her teacher in the usual way that kids with typical hearing tend to do.

On March 3, 2024, the Complainant responded, stating, in part:

The District audiologist and I had discussions about the fact that while Student 1 can 'hear' the words per FLE results, she does not completely understand what is being said...like a person who uses an interpreter to access sound and effective communication.

...

[Student 1] was having fatigue and frustration well before the surgery in several of her classes. Yes, she has good grades, but they are not an indicator of whether a DHH student needs to have an aid or service, or ADA support for accessing effective communication. There is no service (FM/DM, Interpreter) that would be as effective to provide that communication on access for her as transcription.

On March 4, 2024, the assistant director responded, stating, in part, "Nobody else who heard you speak on 1/11 understood you to be asking for 6 periods of transcription, so if that is your request now, then we should discuss further. If you like, I'd be happy to schedule you and the District audiologist to continue topic."

30. According to an internal messaging system, on March 4, 2024, Student 1 messaged the Complainant, "I guess the transcription is ok."
31. According to an internal messaging system, on March 13, 2024, the Complainant messaged Student 1, stating she was going to see if the Typewell transcriber could provide a "verbatim" transcription.
32. On March 13, 2024, the Complainant emailed the audiologist and the assistant director, stating, in part: Student 1 continued to "not prefer" the FM system; the "Typewell" transcription system was not working for Student 1, as "the words [did not] always match up with what Student 1 is hearing"; and that the Complainant was "exploring the CART options – [as] that would be verbatim [transcription] and would suit Student 1's residual hearing better."

In its response, the District characterized this statement by the Complainant as "an update [reflecting the fact] Complainant no longer believed that live transcription was the correct support for Student."

On March 14, 2024, the assistant director responded, stating, "Couldn't we just tell them that and have them change their style? I guess I'm confused why switching from Typewell to CART would be needed, when both services boil down to 'a person listening on the other end of the computer types what they hear'."

33. On March 18, 2024, the Complainant emailed the assistant director, stating, in part:

The surgery doesn't repair her hearing or the fact that she has a long-term, and continuing hearing loss and will continue to have [that challenge]. Hearing 'better' does not mean she doesn't require transcription on services for access to the educational environment. The FLE is not a basis for assessing comprehension and effective communication.

Typewell and CART provide different modes of transcription. Meaning-for-meaning and verbatim respectively...She really needs to have access in other classes, but I have mentioned that more than once.

34. According to the District, as of April 10, 2024, "no progress has yet been reported (nor is [the same] required [to have been completed as of April 10, 2024 under the January 2024 IEP]" in relation to the transcription-related goal in the January 2024 IEP.

### **CONCLUSION: STUDENT 1**

**Issue 1: IEP Implementation** – The Complainant alleged the District did not follow proper procedures for implementing the transcription services in the January 2024 IEP.

A 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, under the January 2024 IEP, transcription services in science class were to be provided beginning January 24, 2024. But said services were not implemented until late February 2024. This represents a delay of approximately four weeks, and a material failure to implement the IEP. Accordingly, some compensatory education is warranted.

A state educational agency is authorized to order compensatory education through the special education community complaint process. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no statutory or regulatory formula for calculating compensatory remedies.

Here, the January 2024 IEP provided Student 1 with one hour each month of SDI in deaf and hard of hearing. Accordingly, the District will provide Student 1 with one hour of compensatory education in deaf and hard of hearing. Said hour may be provided in either a 1:1 setting, meaning just Student 1 and the service provider, or in a group setting. Student 1's IEP team can make the determination regarding setting.

**Issue 2: IEP Development** – The Complainant alleged the District did not follow proper IEP development procedures. Specifically, the Complainant alleged Student 1 required transcription services in all settings and classes, not just her science class. Student 1's IEP first reflected the need for transcription services on January 23, 2024. The January 2024 IEP stated the transcription service was to be a "trial" intervention, and that it would be limited to Student 1's science class.

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

Regarding Student 1's general hearing-related needs, the documentation showed the following: Student 1 repeatedly demonstrated a reluctance to utilize the DM system<sup>2</sup>, even though testing showed the DM system helped Student 1; and hearing aids benefited Student 1, even when Student 1 did not use the DM system.

The documentation provided to OSPI did include some student-specific data that might have supported a finding Student 1 needed transcription services in all classes. For example, in part:

- In mid-November 2023, Student 1 had surgery on her left ear. Following the surgery, Student 1 was unable to place her left side hearing aid in the proper position, which resulted in a notable hearing loss in her left ear. This hearing loss continued until at least mid-to-late January 2024. And the District audiologist predicted said hearing loss would remain until Student 1 could "get permanently implanted with the [hearing aids] (scheduled approximately at the end of [the 2023–24 school] year)."
- Student 1 was absent from February 3–25, 2024. During this time, Student 1 underwent a surgery on her right ear similar to that which was completed on her left ear in November 2023.
- The memo forwarded to various staff members by the director on January 11, 2024 read, in part, "Student 1 reports she's never been able to hear what others in the class are saying."

The documentation provided to OSPI, though, also included student-specific data showing Student 1 primarily required transcription services in one class. For example, in part:

- According to the District audiologist, the January 2024 FLE showed "Student 1 is hearing very well and is able to repeat...words consistently when using the teachers' FM remote microphone."
- Grade-wise, Student 1 performed well in all classes during the 2023–24 school year, with the potential exception of science class, wherein Student 1 scored a C+. And the science class represented a particularly noisy environment, and a teacher that talked quickly.
- The District audiologist had a verbal conversation with the private audiologist, and according to the District's response, "The outside audiologist left her feeling optimistic. While a significant impact was still expected, it was not to the extent that Complainant had expressed concern for. In short, the expectation was that Student 1 would retain her same hearing as before the surgery in at least one ear at a time, with no period of time where neither ear was functional."

In sum, OSPI finds the District initially followed proper IEP development procedures in January 2024, in determining Student 1 would be provided transcription services only in science class.

In making this determination, the IEP team acknowledged the importance of measuring the impact of this "trial" intervention, and whether it needed to be adjusted. For example, in part, the January 2024 IEP read, "Ongoing measurement of service effectiveness [of transcription in science

---

<sup>2</sup> Student 1 wanted to avoid the attention she drew when using the DM system.

class will be important]”, and the January 2024 IEP goal explicitly related to measuring the effectiveness of transcription services in science class. This is in accordance with IEP development procedures; as noted above, a student’s IEP must be revised when that student’s needs resulting from the relevant disability change.

Here, though, it is not clear the systemic data gathering envisioned by the January 2024 IEP was completed. For example, transcription services in science class were first provided in late February 2024. But, between late February and mid-April 2024, the following appears to be the only data that was gathered regarding the “trial” transcription service: on March 4, 2024, Student 1 messaged the Complainant, “I guess the transcription is ok”; and on March 13, 2024, the Complainant noted the “Typewell” transcription system was not working for Student 1 and that a different type of transcription or different transcription services would be more appropriate. Thus, this failure to collect data and further adjust the Student’s services as needed represents a failure to follow proper IEP development procedures.

To account for the foregoing violation, Student 1’s IEP team will be required to meet to thoroughly evaluate all data related to the provision of transcription services in Student 1’s science class. Student 1’s IEP team will then determine: based on the data, should transcription services be provided in other classes? And the District will provide the Parent (and OSPI) with the prior written notice related to this determination.

## **FINDINGS OF FACT: STUDENT 2**

35. According to the District, at the start of the 2022–23 school year, “the Student (though previously eligible for special education services), was living in [another country], attending school, without receiving...special education services.”<sup>3</sup>

According to the Complainant, the previous IEP—from the 2016-2017 school year—included the accommodation of an “interpreter (transliterater)”.

36. According to the District, the Student “returned to the District with an expired evaluation and IEP” on September 26, 2023, the Student was in the tenth grade, and the Student attended a District high school.

37. According to the Complainant, Student 2 “communicates verbally in English, has remarkable speech reading skills, and understands and prefers Conceptually Accurate Sign English (CASE).”

38. A September 27, 2023 “Transfer Review” read, in part, “Student 2 attended an English-speaking school in [other country] where she did not receive special education services...DHH

---

<sup>3</sup> The District’s response clarified, “The Student spent her elementary years in a specialized program for students with hearing loss, placed by the District in a DHH program located in [a different Washington State] school district. Student attended there until the end of the 2016-2017 school year, when she moved to [another country].”

programming was unavailable at Student 2's neighborhood school in 2017; she now attends her neighborhood school."

39. According to the Complainant, on or about October 5, 2023, she provided the special education director a copy of Student 2's previous IEP, from sometime prior to Student 2's family's time in out of the country. The Complainant further stated, "Before [the foregoing] email discussion regarding interpreting services, an FM/DM system was approved, purchased, and provided [by] the District audiologist."
40. The District's group of qualified professionals completed an evaluation of the Student on October 26, 2023. In relation to that evaluation, the District's response read, in part:  
[The audiologist] is a fully qualified and experienced audiologist. [The Complainant] is a fully qualified teacher of the deaf, [and the SLP] has been a [SLP] for 4 years, one year as a fellow and three years with her certificate of clinical competency with the American Speech-Language-Hearing Association.

In part, the October 2023 evaluation included a classroom observation of Student 2, conducted by the District audiologist.

In part, the October 2023 evaluation read:

... Student 2 is at a higher risk for progressive hearing loss, particularly with head trauma. It was recommended that Student 2 avoid contact sports.

...

**Deaf and Hard of Hearing**...Assessment measures included review of previous data, student and support provider interviews<sup>4</sup>, review of current audiological, communication, teacher survey evaluation results, historical review, and the administration of Deaf and hard of hearing self-advocacy survey.

...

[During Student 2's conversation with the Complainant], Student 2...mentioned she needed an interpreter. When asked if she would prefer ASL or Transliteration, she suggested she wanted sign with speech (Transliteration). When interviewer started talking with sign supports Student 2's expression changed and she said it was MUCH better. When asked whether she would like to use an FM/DM microphone she was interested and that anything could help because she was missing a lot in class...Complainant completed a *Audiology Self-Advocacy Checklist - Middle School*...Student 2 scored low in all of the areas, Hearing Medical, Hearing Technology and Use, Educational Services/Communication Access...Per Functional Listening Evaluation (FLE) and extent of hearing loss as well as Student 2's demonstrated strong speech reading skills transliteration support would be provided. A transliterator (interpreter using sign with spoken (silent) speech with conceptually accurate delivery) would provide access to the presenter (teacher, student, etc.) and other auditorily presented information in the educational environment.

...

**Audiology**...Student 2 is an experienced hearing aid user and takes independent ownership of her hearing technology. Currently she is utilizing...rechargeable hearing aids

---

<sup>4</sup> The Complainant interviewed Student 2 on two separate occasions, once in September 2023 and once in October 2023.



in both ears. Her hearing aids are connected to a district-issued FM/DM remote microphone to be used in each of her classes as needed. The teacher wears this microphone to transmit their voice directly to Student 2's hearing aids at a constant level, ensuring that the teacher's voice is heard above the level of background noise/reverberation, regardless of the teacher's distance from the student. Several of Student 2's teachers also use classroom sound speakers during their instruction.

#### Teacher Questionnaire

[Two of Student 2's teachers] completed the *Listening Inventory for Education-Revised Teacher Appraisal of Listening Difficulty (Teacher LIFE-R)*. The Teacher LIFE-R is a report measure that can be used as verification of the listening challenges that a student may be experiencing...Student 2 was observed to have no challenges in her ability to stay on task and attend verbal instruction and understand in most instructional situations (e.g. large full group instruction, teacher moving around the room, group discussions, instructional media sources, etc.). She was observed to be more often challenged or show more hesitation in her ability to volunteer answers to class questions, peer conversations, and attend verbal instruction when noise is present.

#### Student Intake and Questionnaire

An informal intake/interview was obtained on 10-24-23 with Student 2 and educational audiologist. Student 2 reported that there are times when hearing in the classroom is challenging (e.g. when the teacher speaks quickly or when the volume of their voice is softer, voices sound 'muffled'). This is the case even with her hearing aids on. She reported that she can hear much better when the FM remote microphone is used by the speaker. She stated that [her sister] helps her understand what she has missed (they have all their classes together)...Student 2 completed a checklist, the...LIFE-R Student Appraisal...Student 2 reported 'mostly difficult' in the following situations: (1) Teacher talking with back turned or talking while moving around the room (per Student 2, she relies heavily on lipreading); and, (2) Listening when there is noise from inside (other students talking or making noises, HVAC, fan) or outside of the classroom (from hallway, voices next door, from outside through opened window).

...

Student 2's hearing loss is of sufficient magnitude to impact her ability to access classroom instruction. She will likely miss significant portions of speech at a normal conversational volume and have greater difficulty hearing faint or distant speech. As seen in the FLE results, even with her binaural hearing aids, she will be missing significant portions of speech, especially in the presence of background noise (e.g. papers rustling), distance (teacher speaking 3ft+ away), and when there are no visual cues available (e.g. teacher speaking with back turned). FLE results show that she relies heavily on visual input to supplement her access to verbal instruction.

...

**Speech:** Student 2 was given the *Goldman Frisloe Test of Articulation-3 (GFTA-3)*... Student 2 presents with a speech and language disorder secondary to hearing loss. Her speech is characterized by speech sound distortions such as "sh" instead of /s/, but is 80-100% intelligible to communication partners. Expressive and receptive language is delayed with gaps in use and understanding of complex sentence structures, vocabulary, and supralinguistic forms of language such as figurative language... It is recommended Student 2 participate in Communication Services as a related service to access her general education. Her speech disorder is not impacting her academics as she is able to ask

questions in class as reported by her teachers and is understood by her teacher when speaking. Her receptive and expressive language disorder is negatively impacting her academics.

The October 2023 evaluation recommended SDI in math, reading, written language, and “deaf and hard of hearing self-advocacy.”

41. October 16, 2023 meeting notes read, in part:

**Complainant [reported]:** Learning gaps due to not being able to hear language. Discussed importance of building on her language and skills now in preparation for transition after high school. Interpreter/transliterator available as a service will help with providing additional access to learning.

**Speech-language pathologist [reported]:** Language assessment was completed with an ASL interpreter, not transliterator and no FM system. Speech assessment was completed with FM system. She demonstrates some gap in understanding complex sentences, figurative language and some understanding of conjunctions. She also demonstrated use of nonspecific words instead of more specific vocabulary.

42. In part, the Complainant’s complaint request read that the District failed to permit “deaf and hard of hearing-knowledgeable IEP teams to make [IEP] decisions.” In relation to the October 2023 evaluation of Student 2, the Complainant said, the written statement by the SLP in said evaluation that “Sign often uses less specific language than English”, was “patently incorrect and demonstrates lack of deaf and hard of hearing (DHH) knowledge [in evaluating assessments] results.”

43. On November 14, 2023, the Complainant emailed the assistant director, stating, in part, “Student 2 is capable of staying in the District...She is using FM system and gets some help from that. Assessments show she has more access through visual/facial/sign support more than auditory.”

44. In an email, dated November 16, 2023, the District audiologist wrote, in part:

Student 2 is getting access to at least 92% or more of the words correct when using the DM mic, even in the most challenging situations. She seems to me like a driven student who is bright and motivated. I believe she will do well [at her current District school] with accommodations.

The assistant director responded to this email, asking whether Student 2 required an interpreter.

The Complainant responded:

While 95% is great, it also is given within a specific set of conditions. She must be able to see the speaker and their face to understand. If there are other ‘speakers/students’ in the room, responding or asking questions, or other auditorily presented information, she would still need to be able to see a face to understand. That is not always possible, especially with the FM input coming directly from only the teacher.

An interpreter would provide all of the speech and various other auditory information within the classroom. The interpreter would also provide contextually accurate representation (through sign) to support newly presented information thus increasing access.

Transcription would bring printed word to the environment but would reduce her ability to look up from her laptop/CB to see information on a board or a demonstration.

The assistant director stated, "It seems like Student 2's data is saying that using the DM, she can indeed access speech at a high level even without any visual supports, but you are saying the opposite. I'd like to clear this up before we move forward."

45. An email thread between the assistant director and director, dated November 16 through 20, 2023, showed:

- The assistant director believed the Complainant was "selectively ignoring the data the audiologist shared [that] showed basically perfect access to speech via the DM."
- The director stated Student 2's receipt of language "still isn't 100% even in ideal conditions."
- The director stated though it "likely isn't a FAPE requirement" and the service would most appropriately be provided through ADA, the service was likely a "recommendation [that needed to be made] through the IEP team."
- On November 20, 2023, the assistant director stated, in part, "The audiologist clarified that her statements about Student 2 having audiological access were not meant to imply not needing transliteration...Student 2's understanding of what she hears is still very impaired. The audiologist's testing only showed that Student 2 could repeat back nonsense words correctly, it did not prove anything regarding her comprehension, and all indications of her comprehension ability are that it remains quite poor. The transliterator is therefore needed not just to provide access to sounds the DM cannot reach...but also to interpret from English to ASL, and to simplify and fill in elaborations on vocab words."

46. According to the District:

In the time between the evaluation and the [development of the November 20, 2023] IEP, [it was noted] Student had a new DM/FM system that was working far better than her previous system, which was very promising. However, it was noted that even with the new system, her actual language comprehension remained a concern [and] clarity was provided to IEP team members concerning [the] potential challenges of accessing an interpreter and [there was a suggestion to] leave open the option/opportunity for reconsideration of placement to a DHH program if unable to meet Student needs in [the] District.

47. The Student's IEP team developed an IEP for the Student on November 20, 2023. The November 2023 IEP included the following accommodation: educational interpreter/tutor – all educational environments.

The November 2023 IEP provided the Student with a total of 390 minutes of sign language interpreter services each day as a supplementary aid and service, 300 minutes a day in a special education setting and 90 minutes a day in a general education setting.

The November 2023 IEP provided Student 2 with the following academic SDI: approximately 4 hours each week in math, reading, and written language.

48. The November 20, 2023 IEP team meeting notes read, in part:  
Student 2 is hearing well with her hearing aids but doesn't test [well] for comprehension...Presented options for transliterator services. There would likely be a delay in getting a staff member hired to fulfill that need. The other option would be to attend an out of district placement that has more access to interpreter services.
49. A December 5, 2023 progress reporting stated the Student was "not making progress toward goal target" on the November 2023 IEP goal related to DHH self-advocacy.
50. Emails show between December 7, 2023 and January 12, 2024, the following discussions were had between District staff in regard to advertising the District's need for a translator to provide Student 2 with the relevant IEP services in the November 20, 2023 IEP:
- The ASL qualifications and/or skillsets needed in a preferred candidate;
  - The internal processes for getting the position posted;
  - The details of the position – such as the pay rate that would be offered; and,
  - The language of the job posting itself.
51. According to the District, on February 28, 2024, "the [translator] position was posted in the District."
52. According to the District, on March 13, 2024:  
The assistant director and Complainant interviewed an agency candidate who had...become available and whose qualifications were near the current standard. [It] was determined the District would contract to fill the position with this candidate while the District continues to search for a permanent, qualified candidate. [As of March 14, 2024, an] establishing agreement with [the agency candidate is] in process.
53. According to the Complainant:  
Although she is progressing grade-to-grade in her classes<sup>5</sup>, Student 2 is unable to access the educational curriculum without the assistance of her twin sister, [who is] enrolled in [the] same classes.  
...  
The District has been reluctant to move forward [with acquiring an interpreter] because of the [perceived low] 'chances' of acquiring an interpreter. [Student 2's family is] concerned the District will require them to change placement [and the physical location of Student 2's schooling, in relation to the interpreter issue]. Student 2 claims she does not need an interpreter because she wants to stay at [her current] high school.  
...  
Student 2 deserves to have visual support from an educational interpreter/transliterator, as agreed upon by the IEP team.
54. According to the District:  
The IEP team, honoring parent request, determined the Student would be placed in her home school rather than the placement her most recent IEP (2016) called for, a specialized

---

<sup>5</sup> On this point, the District's response read, in part, "the Student continues to make appropriate progress and achieved good grades in her first semester classes."

DHH program outside the District. To support her placement in her neighborhood school, the IEP team determined that a sign language interpreter/transliterater would be required and the service was added to her IEP.

55. During this investigation, the District provided OSPI with a signed agreement (dated March 22, 2024) with a third party that stated a sign language interpreter would begin working with Student 2 for 32.5 hours each week on March 20, 2024.
56. According to the District, it "contracted with an ASL interpreter whose start date was March 28, 2024."
57. In its response, the District acknowledged entering into a contract with an interpreter was "delayed by internal district processes" because it was a "novel [job] posting" for the District. And the District stated, in the future, "when a new position is required for an IEP, we will post a requisition in-District within one week and, if known [it will be] hard to fill [the] position, we will seek a candidate via contract agency without delay."

## **CONCLUSIONS: STUDENT 2**

**Issue 1: Transliteration Services** – The Complainant alleged the District did not follow proper procedures for providing Student 2 with transliteration services.<sup>6</sup>

Here, under the November 2023 IEP, Student 2 was to be provided with transliteration services beginning November 21, 2023. But Student 2 was not actually provided with such services until late March 2024, either March 20 or 28, 2024. This represents a delay of approximately 13.5 weeks, and a material failure to implement the IEP. Accordingly, some compensatory education is warranted.

The November 2023 IEP provided Student 2 with a total of 390 minutes of sign language interpreter services each day as a supplementary aid and service. The purpose of said interpreter services was to permit Student 2 to access her academic SDI and the November 2023 IEP provided Student 2 with the following academic SDI: approximately four hours each week in math, reading, and written language.

Between November 21, 2023 and late March 2024, then, Student 2 was not provided with an interpreter during the provision of approximately 54 hours in math, 54 hours in reading, and 54 hours in written language.

As compensatory education, the District will be required to provide Student 2 with approximately one-third of these figures: 18 hours of SDI in math, 18 hours of SDI in reading, and 18 hours of SDI in written language. An interpreter will be provided, along with the service provider, during the foregoing compensatory education. And said hours will be provided in a one-on-one setting,

---

<sup>6</sup> OSPI opened this issue as one relating to IEP development. During this investigation, though, it became clear it was principally an issue of IEP implementation, that the Complainant believed transliteration services were not provided to Student 2 in a timely manner.

meaning just Student 2 and the two service providers, unless Student 2's IEP team determines said services (or a portion thereof) should be provided in a group setting.

**Issue 2: Evaluation Procedures** – The Complainant alleged the District did not follow proper reevaluation procedures under WAC 172A-03020 in October 2023. Specifically, Complainant alleged that those portions of the October 2023 reevaluation that related to hearing needs were not completed by qualified professionals, sufficiently comprehensive, or technically sound and reliable.

In support of her position, the Complainant stated the following language in the October 2023 reevaluation was "patently incorrect and demonstrates lack of deaf and hard of hearing (DHH) knowledge [in evaluating assessments] results": "sign often uses less specific language than English."

Here, as noted in the District's response, qualified professionals completed the October 2023 reevaluation:

[The audiologist was] a fully qualified and experienced audiologist. [The Complainant was] a fully qualified teacher of the deaf, [and the SLP had] been a speech language pathologist for 4 years, one year as a fellow and three years with her certificate of clinical competency with the American Speech-Language-Hearing Association.

OSPI does not find a violation of this particular requirement.

Additionally, in relation to Student 2's hearing needs, the October 2023 reevaluation was comprehensive. For example, in part, the October 2023 reevaluation incorporated the following data sources: multiple interviews with Student 2; a classroom observation; review of relevant medical history; completion of the *Audiology Self-Advocacy Checklist - Middle School*; completion of the *Listening Inventory for Education-Revised Teacher Appraisal of Listening Difficulty*; and completion of the *Goldman Fristoe Test of Articulation-3*. OSPI does not find a violation on this score.

Additionally, there was nothing in the documentation provided to OSPI during this investigation to suggest the assessments administered to Student 2 as part of the October 2023 reevaluation were not technically sound. Similarly, there was nothing to suggest the results of said assessments were unreliable. OSPI does not find a violation.

### **FINDINGS OF FACT: STUDENT 3**

58. According to the District:

In October of 2022, the Student was referred to the guidance team to discuss his newly diagnosed hearing loss. The Student was in the 1st grade, attended [an] Elementary School and was not receiving any special education services. Following the guidance team meeting (10.21.22) the Student was referred to a special education evaluation which was completed on 1.11.23 and the Student was determined ineligible for special education services. It was determined that he required a 504 plan for accommodations due to his hearing loss and a 504 plan was created on 1.24.23.

59. According to the Complainant:

[During the 22-23 school year], Student 3 was found to have mild-to-moderate bilateral hearing loss. He presented with some speech irregularities but appeared to be able to communicate clearly. Student was getting hearing aids...He was provided with a classroom speaker [and] genetic testing...concluded Student 3's [hearing challenges were] possibly progressive.

...

The first-grade teacher said Student 3 was doing fine in class and socially...As the newly-hired, only deaf and hard of hearing specialist, I...suggested we follow through with comprehensive DHH-related evaluations to establish eligibility needs...This process became contentious...Ultimately, the 'team' decided on 504 eligibility for Student 3.

60. A January 17, 2023 communication referenced "FM system equipment" being provided to Student 3 as part of a 504 Plan.

61. On June 11, 2023, the Parent emailed several District staff, stating, in part:

[A] genetic test has been completed. The results show that Student has a rare genetic disease that accounts for [his hearing loss and the failure to thrive] and other physical markers, known as KBG Syndrome.

...

Student also had another appointment with his audiologist [from the] Children's Hospital, who flagged one measure of his audiogram as showing a slight progression in hearing loss and adjusted his hearing aids for that particular frequency. Given this new diagnosis, the likelihood for ongoing hearing loss, and a review of his performance this year, we would like to formally request a full and individual re-evaluation for Student...To help identify some of the nuanced and specific needs that come with being a hard of hearing student, we request that Center for Deaf and Hard of Hearing Youth (CDHY) be a part of this evaluation team.

...

A re-evaluation is appropriate because Student's medical status has changed, and after implementation of a 504 plan he has shown both a regression and a plateauing in his academic performance indicating that his needs are not being addressed with the current accommodations.

62. A June 11, 2023 "Special Education Referral Document" read, in part:

This meeting is to discuss 1st grader Student 3 at [an elementary school] and his newly diagnosed hearing loss...He is currently at benchmark for 1st grade. His audiology report was explained that Student will be getting bits and pieces of words and missing some of the letters such as vowels. So Student is having to use inferring and visual cues to put together all the pieces he needs to understand. Parents talked about how engaged Student was in the audiology assessment with the amplification system. It appeared that he was able to participate more fully because he was able to hear better.

...

Student cannot hear all the sounds when people speak. He may hear some sounds and then has to try to put together the concept of what is being said. He is particularly impacted within group settings or when there is a lot of background noise. Concern was mentioned around the amount of effort and stamina Student must use when trying to separate the sounds he needs to hear to access his education, and which sounds to ignore.

...

Guidance Team Recommendation: Refer to Evaluation Group...Projected date of review [of initial evaluation results]: December 14, 2023.

63. At the start of the 2023–24 school year, Student 3 was not eligible for special education services, was in the second grade, and attended a District elementary school.

64. According to the District:

At the start of the 2023-2024 school year, the Student was referred for a special education evaluation due to a new diagnosis and new audiology results.

...

This recommendation was supported and the process to communicate with CDHY, establish an agreement and coordinate scheduling began. Throughout the process there were ongoing challenges/delays with the contracted provider that resulted in two evaluation extensions. Parents were kept well informed and consented to the extensions, communicating their preference for the involvement of CDHY, even with the delays.

To summarize, two significant delays occurred:

[First], the SLP from CDHY reported that she would be unable to complete her portion of the evaluation in early December, as agreed, due to illness. This led to an extension to a new date of 1.22.24 [sic].

[Second, in late December 2023 or early January 2024, the District learned], due to a data breach in CDHY's organization, [there was] no ETA for when the CDHY SLP could resume work.<sup>7</sup> [As a result, the District] shifted our plans: the District's SLP would: meet separately with CDHY's SLP to consult on the testing plan; administer the same testing she recommended; consult with CDHY's SLP again after administering it; and, join together in a results meeting with CDHY's SLP to discuss the results as a group.<sup>8</sup>

[These steps] required a further extension of the timeline, to 3.11.24.

While it is true that the evaluation process took longer than expected due to unforeseen issues with CDHY involvement, the district honored the parents continued preference to involve CDHY in the evaluation...The District finds no corrective action necessary.

65. According to the Complainant, "[During the 23-24 school year], Student 3 has demonstrated limited academic progress; Parents have requested outside DHH-knowledgeable personnel to assess<sup>9</sup>; [and said assessments] are still in progress [as of February 26, 2024]."

---

<sup>7</sup> Emails dated November 20, 2023 through January 2, 2024, are generally supportive of these statements by the District. Though, OSPI notes the Parent was not included in the referenced email threads.

<sup>8</sup> Emails dated January 5 through 11, 2024, do show the revised course of action was for the District's SLP to consult with the CDHY's SLP, in completing the reevaluation. Relevant evaluation areas appeared to be both speech language pathology and psychology; and the Parent was not included in the referenced email threads.

<sup>9</sup> The Complainant stated the Parents made this request on September 29, 2023.



66. On September 21, 2023, the Parent emailed the District and CDHY:

In a more typical scenario, we would have signed papers to start the process immediately. However, as covered in the email sent last June, we requested the evaluation be completed through [CDHY], so his referral cannot move forward until they are contacted. The team understood why we would want to exercise our right to have specialists trained in the nuances of hard of hearing students conduct some of that testing. We want CDHY to provide the SLP and Psychologist for the re-evaluation and consider their data when deciding on the accommodations for Student.

...

We began the process for a re-evaluation last June, and I understand that the summer months interrupted that process. However, we are all aware that the timeline for an evaluation for an IEP is time sensitive so your immediate attention to this matter is greatly appreciated.

67. September 20, 2023 meeting notes read, in part:

Family consulted with CDHY- some of his deficits may be a result of his hearing loss...The hearing aids bring up the volume of everything in his 'bubble' but then everything out of the bubble is reduced. The FM system helps him with access to the instruction, but it doesn't solve the problem...Speech was delayed. Single words- end of 2, Sentences- in his 3's. People outside of the family didn't understand him until 4. Speech was never clear...He's very visual- parents are pursuing training in ASL...The team recommends a new evaluation to include communication (language), and to re-look at academics and social-emotional. The DHH teacher also recommends looking at executive functioning.

Parents are very interested in having CDHY complete the evaluation...The team discussed that depending on the level of involvement from CDHY, it might be best to wait and see what the plan of action is before getting consent, as this will start the legal timeline. Parents agreed to holding off on consent until CDHY's involvement is determined.

68. On September 27, 2023, the assistant director emailed the Parent and several District staff: CDHY staff have "historically somewhat hard to book, so that is just something to keep in mind. If they say they are unavailable for a long period of time, my preference would be for that to not hold up the process."

On September 29, 2023, the Parent responded:

When planning the next steps, I request that the evaluating team consult with CDHY ahead of time to determine appropriate evaluations, which includes allowing them to view previous evaluations to see which tools were used initially...I request CDHY consultant observe Student in the classroom...I understand that logistically, we would not be able to start evaluations right away as CDHY's timeline would likely determine next steps. But, I would still like to start with them and see what that timeline actually looks like before agreeing to begin the process.

69. An October 16, 2023 prior written notice read, in part:

Student has a documented hearing loss associated with his recent diagnosis of KBG syndrome, and due to additional information gathered since his last evaluation on 1/11/23, the team recommends opening a new evaluation to determine if Student now has a need for specially designed instruction.

...

Student's progress monitoring data suggests that he is not making the expected growth given classroom interventions and 504 Plan accommodations for his hearing loss.

...

Student will be assessed in the areas of: medical/physical, communication (including language), audiology, deaf and hard of hearing, observation, general education, academics (reading, writing, and math), social-emotional, and executive functioning. The communication assessment will be completed by a CDHY [SLP], and the academic assessment will be completed by a CDHY school psychologist. CDHY will also consult with the [school] team once all assessments have been completed, and the [school] team will determine eligibility based on all of the collective information gathered.

70. On October 23, 2023, the Parent emailed several District staff, stating, in part, "Just this afternoon...I sent...the signed forms so everyone can get started, [including the] Consent for Initial Evaluation [form]."

In a separate email, dated October 23, 2023, the assistant director stated the District had reached out to CDHY "and they've come up with a plan for CDHY staff to conduct academic and SLP assessments for this evaluation. This would be in combination with the assessments (e.g. social rating scales) our own staff will do."

71. According to an email thread, on November 15, 2023, a previously-scheduled "CDHY evaluation" was cancelled because the Student had appointments "with several specialists at the Hearing Loss Clinic at [the] children's hospital."

In a related email, the Parent wrote, "Of course, we are prioritizing CDHY completing the evaluations over the amount of time the evaluation takes. So, we are happy to give our permission on an extension. But, also, we'd be happy to protect those days [CDHY will be assessing the Student] when we know they are coming."

A separate email suggests the foregoing testing may have been completed on November 17, 2023.

72. On November 27, 2023 and January 19, 2024, the Parent signed a 'Request for Initial Evaluation Extension' "due to CDHY's need." Said document stated the "original expected completion date" was December 14, 2023, but that the "evaluation extended to-date" was now January 22, 2024 and then March 11, 2024.

73. According to the District, "the Student was found eligible for special education under the category of Hard of Hearing on March 11, 2023."

The March 11, 2024 evaluation found Student 3 eligible for special education under the category of hard of hearing, and recommended Student 3 be provided with SDI in the following areas: math, written language, DHH, and communication. It also recommended supplementary aids and services in the following areas: DHH consultation and audiology.

In part, the March 2024 evaluation included the following: a March 4, 2024 hearing screening; a December 16, 2023 Screening Instrument for Targeting Educational Risk (SIFTER); a review of extensive data; a November 21, 2023 Functional Listening Evaluation (FLE), conducted by the District audiologist; and, the Clinical Evaluation of Language Fundamentals – 5th Edition (CELF-5), “to gather information in the area of communication as it relates to language.”

During the instant investigation, the District highlighted the fact the March 2024 evaluation noted the Parents suspected “a second genetic condition Pendred Syndrome [that would require] further testing to confirm [and that there was] no indication of the date of the diagnosis nor of an official report being provided.”

74. During the instant investigation, the District provided OSPI with a draft IEP, dated April 1, 2024. The District explained, “The team is waiting on the DHH teacher to add a goal and to upload the initial consent form [before the IEP can be considered] finalized.”

The draft April 2024 IEP included SDI in the following areas: communication, math, written language, and DHH. The draft April 2024 IEP included related services in the following area: audiology. In part, the draft April 2024 IEP included the following accommodations:

- Provide listening breaks to reduce auditory fatigue;
- Access to Bluetooth for Hearing Technology;
- Access to pass-around microphone;
- FM/DM system;
- Closed captioning; and,
- Support auditory with visuals.

### **CONCLUSIONS: STUDENT 3**

**Issue 1: Child Find** – The Complainant alleged the District did not follow proper child find procedures in relation to Student 3 in fall 2023, specifically that the District should have found Student 3 eligible for special education prior to March 11, 2024.

Here, the District determined Student 3 needed to be evaluated for potential special education eligibility on June 11, 2023.

A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. Once the need for an evaluation is identified, a district must act without undue delay and within a reasonable period of time; and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable.

June 22, 2023 was the final day of school for the 2022–24 school year; September 6, 2023 was the first day of school for the 2023–24 school year; and the District obtained the Parent’s consent for an initial evaluation on October 23, 2023.

In part, between June 11 and October 23, 2023: District staff met with Student 3’s Parent on September 20, 2023, to discuss Student 3’s hearing needs, as well as relevant medical history; and

on October 16, 2023, the IEP team: (i) reviewed Student 3's academic progress since he was first provided 504 supports<sup>10</sup>, and (ii) determined the respective responsibilities of District staff and CDHY staff in completing the initial evaluation. Based on the foregoing, OSPI finds the District to have acted without undue delay in procuring the Parent's consent for an initial evaluation for Student 3, and OSPI does not find a violation on this score.

A district must fully evaluate the student and arrive at a decision regarding eligibility within 35 school days after the date written consent for an evaluation has been provided to the school district by the parent or such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

Here, December 14, 2023 represented a date 35 school days after October 23, 2023. But on November 27, 2023, the Parent provided consent for an extension of the completion date for the initial evaluation, with a new completion date of January 22, 2024. And, on January 19, 2024, the Parent provided consent for an extension of the completion date for the initial evaluation, with a new completion date of March 11, 2024. Based on the documentation provided to OSPI, the foregoing extensions were necessary: the Parent wanted CDHY personnel to be involved in the initial evaluation; a relevant CDHY staff member experienced an unexpected illness (and absence from work) in or around December 2023; and CDHY experienced a data breach in late December 2023 or January 2024, which impacted its involvement in Student 3's initial evaluation. And, importantly, WAC 392-172A-03005(3)(c) permits a parent and district to agree on an initial evaluation completion timeline in excess of 35 school days, and, here, that is what took place. OSPI does not find a violation.

### **CORRECTIVE ACTIONS**

By or before **May 8, 2024, May 10, 2024, June 7, 2024, June 20, 2024, September 4, 2024, November 8, 2024, and December 13, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Student 1**

##### **Compensatory Education**

By or before **May 8, 2024**, the District and Parent will develop a schedule for one hour of compensatory education in deaf and hard of hearing.

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

---

<sup>10</sup> Student 3 was provided with 504 supports on or about January 24, 2023.

designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **May 8, 2024**.

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 **June 7, 2024**.

By or before **June 7, 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 **June 7, 2024**.

### **IEP Meeting**

By or before **May 8, 2024**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team will thoroughly evaluate all data related to the provision of transcription services in Student 1's science class. Student 1's IEP team will then determine: based on the data, should transcription services be provided in other classes?

By **May 10, 2024**, 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) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

### **Student 2**

#### **Compensatory Education**

By or before **May 10, 2024**, the District and Parent will develop a schedule for 18 hours of SDI in math, 18 hours of SDI in reading, and 18 hours of SDI in written language.

An interpreter will be provided, along with the service provider, during the foregoing compensatory education. Services may be provided with just Student 1 present, or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **May 10, 2024**.

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 **December 13, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **June 20, 2024, September 4, 2024, and November 8, 2024**, of the compensatory services provided to the Student at that point. 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 **December 13, 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 **December 13, 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 23rd day of April, 2024

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, Complainants (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. Complainants (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.)