

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-74

PROCEDURAL HISTORY

On May 23, 2024, 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 Central Kitsap 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 May 23, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On June 6, 2024, the District requested an extension of the deadline to submit its response. On the same day, OSPI granted the extension until June 14, 2024.

On June 14, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on June 17, 2024. OSPI invited the Parent to reply.

On June 20, 2024, the Parent requested an extension of the deadline for her to submit her reply to the District's response. On the same day, OSPI granted the extension until June 28, 2024.

On June 21, 2024, the District submitted additional information, and that information was forwarded to the Parent on the same day.

On June 28, 2024, the Parent submitted a reply to the District's response, and that information was forwarded to the District on July 1, 2024.

On July 1 and 3, 2024, the District submitted additional information, and that information was forwarded to the Parent on July 3, 2024.

On July 5, 2024, the Parent submitted additional information, and that information was forwarded to the District on the same day.

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

ISSUES

1. During the 2023–24 school year, per WAC 392-172A-03105, has the District properly implemented the Student's individualized education programs (IEPs), including accommodations and modifications?
2. During the 2023–24 school year, per WAC 392-172A-03090, has the District provided the Parent progress reports in a timely manner?
3. During the 2023–24 school year, per WAC 392-172A-05010, has the District followed the proper procedures for prior written notices (PWNs)?

LEGAL STANDARDS

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

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Prior Written Notice: Prior written notice (PWN) must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. It ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The PWN should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. A PWN is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background: 2022–23 School Year

1. On May 18, 2023, the Student's IEP team met to review the Student's annual IEP. The Student was eligible for special education services under the category of "Other Health Impairment."

2. The documents sent by the parties to OSPI included two different IEPs dated May 18, 2023. Those IEPs had two different matrixes and goals. One version of the matrix will be designated "IEP-A" and the second version will be designated "IEP-B".
3. IEP-A's service matrix included specially designed instruction (SDI), provided primarily by a paraeducator and mostly in a general education setting from May 19, 2023 until June 30, 2024, as follows:
 - Reading: 150 minutes weekly (special education setting)
 - Written Language: 150 minutes weekly
 - Math: 150 minutes weekly
 - Social, Emotional and/or Behavioral (SEB): 150 minutes weekly
 - Adaptive: 60 minutes weekly
 - Speech/Language: 30 minutes weekly (speech language pathologist (SLP), special education setting)

IEP-B's service matrix included SDI from July 1, 2023 until May 17, 2024, as follows:

- Reading 180: 150 minutes weekly (special education teacher, special education setting)
- Written Language: 150 minutes weekly (paraeducator, general education setting)
- Math: 150 minutes weekly (paraeducator, general education setting)
- Social Emotional/Behavioral (SEB): 150 minutes weekly (paraeducator, general education setting)
- Adaptive: 60 minutes weekly (paraeducator, general education setting)
- Speech/Language: 30 minutes weekly (SLP, special education setting)
- Reading Block: 100 minutes daily (general education teacher, general education setting)

In IEP-A and IEP-B, the Student received the following related services:

- Written Expression: 80 minutes monthly by an occupational therapist (OT) in a special education setting)
- 1:1 Paraeducator Support: 1,685 minutes weekly

In IEP-A and IEP-B, the section entitled "Accommodations and Modifications" were almost identical. That section stated, in part:

- Classroom paraeducator for support.
- Daily written schedule; daily point sheet schedule.
- Allow frequent breaks in the classroom.
- Preferential/variable seating.
- Hands on activities for lessons that are conducive to hands-on activities.
- Use of visual tracking tools for reading.
- Use of graphic organizers that are subject specific with subject specific word banks.
- Break lessons or directions into smaller units.
- For writing: continued access to assistive technology.
- For math: multisensory math strategies/activities and manipulatives.
- General Education Math with modifications, calculator, teach strategies to determine operation.

4. IEP-A's reading goal 1 read:
[Student] will use word recognition and decoding strategies to read and comprehend 2nd-grade level text from retell of a story using 9 words with a quality of 1 (1-2 details) to

retelling using 35 words or more with a quality of 3 (at least 3 details in sequential order) over 3 data trials.

IEP-B's reading goal 1 read:

[Student] will use word recognition and decoding strategies to read and comprehend 2nd-grade level text as measured by Read 180¹ progress monitoring from a retell of a story using 9 words with a quality of 1 (1-2 details) to retelling using 35 words or more with a quality of 3 (at least 3 details in sequential order) over 3 data trials.

The math goal in both IEPs read:

Using a rubric to measure understanding, [Student] will with fading support choose the correct operation in 2-step word problems with simple phrasing by 1. Understanding the vocabulary, 2. Underlining the key numbers, 2. Identifying operation, 4. Solving the problem, and 5. Labeling the answer from 0/5 to 4/5 accuracy on 4 out of 5 trials.

The SEB goal in both IEPs read, "Using sentence strips and/or graphic organizers about the topic, adult and or peer cueing, and faded support Student will play a specific role as a communication partner in a grade-level group work setting from 0% to 70% accuracy over 3 data trials."

The writing goal in both IEPs read:

With accommodations, [Student] will gather relevant information from reliable sources to write a summary paragraph including an introduction, conclusion, and 3 details using a subject-specific graphic organizer, subject-specific word bank, and sentence starters from 0 to 3 on a writing rubric over 3 data trials.

Both IEPs' second reading and adaptive (two) goals were the same. Additionally, IEP-A had two speech goals while IEP-B had one speech goal.

The IEP included math progress reports, as follows:

February 1 2024:	Limited progress, 0/5 trials independently.
Comments:	[Student] requires consistent prompting to get through the steps. Fading at this time is not an option to help move [the Student] towards skills mastery.
May 9, 2024:	Limited progress, 0/5 trials independently.

There were no progress notes provided for the SEB goal for the 2022–23 school year.

5. A May 22, 2023 PWN referenced the May 18, 2023 IEP meeting and summarized the Student's goals in math, reading, writing, SEB, and two adaptive goals. The reading goal documented in this PWN did not refer to the Read 180 program.

¹ Read 180 is an evidence-based blended learning solution designed for students in Grades 3–12. See [HMH Read 180 | 3-12 Reading Intervention Curriculum | HMH \(hnhco.com\)](https://www.hmhco.com).

6. A June 16, 2023 PWN mentioned in part that Student's IEP was amended to eliminate speech goal 1 and keep speech goal 2. This PWN made no reference to changing reading goal 1.
7. Based on documentation reviewed in the investigation, IEP-A was created in May 2023. In June 2023, the IEP was amended, creating IEP-B. In her reply, the Parent stated that IEP-B was emailed to her by the District in August 2023.

2023–24 School Year

8. On September 6, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was in sixth grade, attending a District middle school. In its response, the District presented IEP-A as the IEP that was in effect at the start of the 2023–24 school year. In her reply to the District's response, the Parent stated that IEP-B was emailed to her by the District in August 2023 and that this IEP was in effect at the start of the 2023–24 school year.
9. A September 25, 2023 PWN stated, in part, "OT has been hired and will start within one week; will review missed services and establish plan for making up services."
10. In September 2023, the Student did not receive occupational therapy services. The OT's log also shows that in some months, the Student received more occupational therapy services than was allocated in the Student's IEP. In March 2024, the Student received 120 minutes of services from the OT, and in May 2024, the Student received 130 minutes.
11. On October 11, 2023, the IEP team held a meeting. Notes from that meeting stated, in part:
Math- Doing some great things when he is able to be there. There have been some days where he has a hard time staying the whole time. He is using a calculator.
...
Teachers (Classroom, Case Manager, Para) are making modifications [Student's] work, but mom would like to more training for teachers for this skill.
12. An October 11, 2023 PWN stated, in part:
Parent would like the teachers to have more training in implementing the modifications and ways for him to access his learning in general education.

Teachers (Classroom, Case Manager, Para) are continuing to make modifications to [Student's] work so he can participate in general education.
...
Communication log between home and school is not being fully utilized yet.
13. On October 26, 2023, the IEP team held a meeting. Notes from that meeting stated, in part, "Examples of modifications from Periods 1, 3-4, and 5 (math) were shown."
14. On November 11, 2023, the IEP team held a meeting. Notes from that meeting stated, in part:
[Math teacher] (5th, Math): responded well to modified assessment and increasing independence.

Grading: completed quiz independently and got a 62.5%, on rubric, overall a B Rubric works well for assessments; not yet working for daily stuff he does/participates in - daily work for other students is just "completion" on their assignment log (5pt scale)
Going forward: Rubric for assessments; 5pt classroom rubric for daily work.

15. A November 15, 2023 PWN stated, in part, "On the same day as this meeting [Student] started a new schedule for the quarter (Art, Theater, Math, Science, System 44² reading block, Advocacy)."
16. On November 17, 2023, the Parent emailed the District a message that stated, in part, "We would also like to commend and share our appreciation for [math teacher] for her work to adapt her materials for [Student]. It is clear she is making the effort and has been very transparent and communicative with us."
17. On December 13, 2023, the IEP team held a meeting. Notes from that meeting stated, in part:
[Math] - individualized out of the book; needs a slower pace and more repetition; often working 1:1 [paraeducator] rather than with peers. Prefers quiet of hallway and wants to work in that space rather than in the classroom. Teacher requests for him to stay in the classroom and he gives pushback to move to the hallway.
18. A December 14, 2023 PWN stated, in part:
In math, the curriculum is moving very quickly and he is often self-selecting to work in the hallway; the team discussed how to adapt the work to see what [Student] knows.
...
The pace and detail of topics covered in Math do not align with [Student's] overall math needs; identifying personal 'power standards' will help him more deeply access applicable concepts and for the educational team to address his IEP math goals.
19. On December 20, 2023, case manager 1, who was also the Student's special education teacher for reading and writing, emailed the Parent, in part, as follows:
We are working (reading goal 1) on retell through our Blooket³ project in class, but that doesn't give a specific measurement toward this goal. We read an entry in our book out loud as a class, then each student creates their own Blooket quiz...
...
What the staff worked on: 'This goal is also being addressed through the Blooket quiz. Once each student completes their Blooket, we play each one as a class. Students are allowed to refer back to the text for answers, which [Student] does for approximately 20% of questions to which he does not already know the answer.'
...
I'm working with [math teacher] on getting specific data on this goal (math)...I know that [Student] works on word problems, but I haven't had a chance to see it for myself and I don't want to speak to that which I don't know.
...

² This class was in a special education setting.

³ An educational website for reading.

What the staff worked on (in writing): 'This is another one that we are working on with our Blooket activities. These require [Student] to not only comprehend what he is reading, but also pull out and rephrase/retell specific information from the text and turn it into a multiple choice question. The kids might not realize it, but they are doing a lot of this when they create the Blookets, they just aren't linking it all together as a paragraph. Eventually, this activity will evolve so that a paragraph summary replaces the Blooket, and then we will be more directly aiming at this goal on a daily basis.'

...

(For social goal), [Student] has done a great job of getting to know the kids around him during social time. But it is much harder for him to engage with peers during work time...Luckily, he has great opportunities to develop this skill in our System 44 class. With only 3-4 other students in the class, almost all of our work is small group work, and the other students in that class are very conscious of ensuring that [Student] is included with them.

20. A January 25, 2024 document, entitled "[Student] IEP goals," which stated it was a "working copy" of the Student's IEP goals, documented, in part:

(regarding math) This has been our biggest struggle when it comes to [Student's] academic growth and measurement. [Student] is not yet able to consistently identify either operation that he needs to do, word problem or not. Even when a division problem is written as a mathematical expression, [Student] is unable to identify that division is the operation that needs to be executed. When he is told that he needs to do division, he will only do addition or subtraction despite many reteachings.

...

This has been the hardest goal (social/emotional) to measure since we have not yet had extensive success with engaging [Student] in group work as he is very adult-focused. So, when we do get that social ball rolling in a working group, I am always hesitant to intervene and insert sentence strips and/or graphic organizers into the situation, worrying that I might mess up the social 'flow'. That said, without those supports, [Student] still manages to contribute to working groups that he chooses to work with, especially when he can make connections between the subject matter and his favorite interests.

21. On January 29, 2024, the Student's IEP was amended. The Student's IEP provided SDI from January 29 until May 17, 2024, as follows:

- Reading: 120 minutes weekly (special education teacher, special education setting)
- Written Language: 120 minutes weekly (special education teacher, special education setting)
- Math: 150 minutes weekly (paraeducator, general education setting)
- SEB: 150 minutes weekly (paraeducator, general education setting)
- Adaptive: 60 minutes weekly (paraeducator, general education setting)
- Speech/Language: 30 minutes weekly (SLP, special education setting)

The Student received the following related services:

- Written Expression: 80 minutes monthly (by an OT in a special education setting)
- 1:1 Paraeducator Support: 1,685 minutes weekly

The accommodations and modifications were the same as the May 18, 2023 IEPs. Regarding the Student's goals, the math and SEB goals remained the same, and the phrase "as measured by Read 180 progress monitoring" was removed from the first reading goal.

22. On January 30, 2024, the Parent emailed the math teacher, in part, as follows:

We met yesterday to talk about some amendments to the IEP and how [Student's] been struggling...Thank you for taking time to write that out and for all of the work you've been putting into adapting his work; I know you've put a lot of heart and time into it.

One thing that came up at the meeting was that he hasn't been participating much since winter break for various reasons and might also be trashing his work before he gets home.

23. On January 31, 2024, the math teacher responded, in part:

My number one goal after Winter Break was to have [Student] complete some two-step problem solving tasks so that I could gauge his present levels. It was those tasks that he was not making progress on. I wanted to use the results of that work to help guide what he would do next, so I did not have additional tasks planned. I have attached the problem-solving tasks to this email. These would be considered 3rd and 4th grade level problems.

I was also asking [Student] to work on some problem solving in IXL. I wanted him to work on code SRL which was 'Two-Step Mixed Operation Word Problems', a 3rd grade skill. When I look at his history of IXL use, it shows that he did not complete any problems in that skill. The only thing he did in IXL during January was two very easy Pre-Kindergarten skills: 'Long and Short' and 'Compare Size, Weight, and Capacity'.

Since I wasn't seeing any work with two-step problem solving, I decided to give him some one-step word problems. I found that he could correctly solve the addition and subtraction problems (with a calculator), but not the multiplication and division problems. I also found that he was simply writing a one-number answer and was not showing what problem he was solving (i.e. just writing 15 instead of $7+8=15$).

So that led into [Student's] most recent work where he has been working on writing algebraic equations to match addition and subtraction problems that are modeled using manipulatives. When he returns (tomorrow or next week) he will be writing algebraic equations from one-step word problems (addition and subtraction only) and then solving for the unknown amount. The next step will be to write algebraic equations that use multiplication and division.

24. On February 22, 2024, case manager 2, who was also a special education teacher, emailed the Parent, as follows:

We are teaching [Student] skills based on his individual 'access points' so he can move forward along with rest of the students who are in his classes. The work that is being sent home is adapted work that allows him access to the general education standards at his learning level. I am following the foundation of inclusive education which incorporates modifying materials in the general education setting, which requires knowledge of the progression of skills for the strands and what the student's starting point for understanding each strand.

These skills are based upon the Common Core Standards found at 6th grade (for each academic strand). The materials assigned in the math class, given to rest of the students for this math strand, can't be modified down low enough for [Student] to engage in a learning task, hence the work you see being sent home.

Our goal is to teach [Student] where he's at, which at this point, requires materials that the rest of the students in his class aren't using (the work you see being sent home). This is in respect to his academic 'access point' and not that of any other student, per his IEP/evaluation information. When [Student's] skills are at the level where we can use the materials provided to the rest of his class with direct modifications to those materials, we will do so. For right now, you will see the work he is doing to get him to that point.

In addition, we are also working on the goal in math from his IEP, which is different from what is being taught in the classroom most days. Some of the materials that you will see coming home is a reflection of the goals in his IEP. We are balancing between what is being taught in the gen ed classroom for inclusion and what was decided on during his last IEP for his goals. For further understanding of the materials you may see, math for example, there are multiple components we are required to teach (e.g. math vocabulary, key numbers, identifying operations, solving the problem and correctly labeling the answer). Those individual skills required to solve a word problem will often need to be taught separately due to the complexity of the goal.

I hope this explains more clear why you are seeing the type work he is doing in class each week. We will continue to send home the work that he is and isn't doing, along with the data and behavior daily/weekly documentation we committed to.

25. A March 4, 2024 PWN stated, in part:

[Parent] sent a letter on 2/26/24 outlining some requests in support of [Student]. In a phone call between [Parent] and [Assistant Director of Special Services], the following items were agreed to:

The district will continue to have the Special Services TOSA (teacher on special assignment) work with the paraeducator, and we will inquire about having the TOSA work more closely with the math teacher.

The district will continue to work on providing samples of how [Student's] classwork is modified from what the rest of the class is working on.

26. On March 4, 2024, the Parent and the assistant director for the District had a telephone call.

The notes from that call stated, in part:

(Summary of mom's concerns):

Main concern: work isn't being modified appropriately (math and science)

- Case manager 2 did send some things home, but way off base.
- Is he being 'encouraged' to go to the hall or library?
- I don't feel like I understand why he may not be participating.
- Academics are not the main goal.
- Want to see what is happening in class and what [Student] is doing.
- Training - could the TOSA also work with the math teacher.

later added: TOSA and she will be working with the team (including math teacher).

[Assistant Director] asked - have you considered a math class that is geared more towards his level (ME - which means Math Essentials)?

[Parent] no, I haven't seen evidence that the current program isn't working. Would consider that if we could get a better picture of current modifications.

27. On March 11, 2024, the school psychologist emailed the Parent, in part:

The team...would like the to have the insights that a Functional Behavior Assessment would offer in order to fine tune interventions, so that [the Student] is more successful at school. His IEP is being implemented as it was written...but work avoidance behaviors are having a significant impact on [Student's] day-to-day engagement, and it would be very helpful to better understand the motivations and circumstances surrounding that behavior, so that targeted interventions can be developed, and implemented to help [Student] be more successful at school.

28. On March 11, 2024, the Parent consented to the reevaluation. The section entitled "Note" stated:

I do not give consent for a functional behavior assessment of my child, [the Student]. His current IEP has not yet been implemented with fidelity during this 23/24 school year. It was stated that the 'IEP is being implemented as it was written,' but I have repeatedly requested evidence of such and none has been produced. [Student] had work avoidance behaviors when at [elementary school] prior to full implementation of the IEP. Those avoidance behaviors resolved when his IEP, which included the accommodations listed in [Student's] current IEP, was fully implemented with fidelity.

29. On March 11, 2024, the Parent sent the District the following email, "We request that our child...be opted out of all standardized testing currently utilized and any added at any time in the future for the duration of enrollment."

30. On March 18, 2024, the Student's IEP team met. Notes from that meeting stated, in part:

- [Student] is working at a basic level of ratios, which is different than what the class is doing. [Math teacher] explained the ratio work that the rest of the class is doing.
- Question about what the modification looked like for that. [Math teacher] explained-- He is using picture-related ratios - he is counting the items 6 writing the ratio expressed in the picture. He is still struggling with knowing order is important in terms of ratios.
- He can use his calculator. He doesn't have to completely master the basics, but he has to have some level of understanding in order to do the higher level activity.
- [1:1 paraeducator] shared some recent progress:
 - She shared examples of the notes she took today (he wasn't there, so she took notes).
 - There are times we do extra explanations or use manipulatives, sometimes we need to have more conversation. That is hard to do in the math classroom.
 - He also asks for a break often during math. We often do a 10 minute-break, when he asks for it.
 - If he is out of class, it's because he is having a hard time. It's hard to gauge if it is work-avoidance or something else (shutting down). It happens most often during PE and during lunch.
 - Sometimes, he comes from PE dysregulated and needs to process that during math (which follows PE). Sometimes it spills into math.
- Structure of the class- entry task, direct instruction, time to work while the teacher roves to check in with individual students.
- [TOSA] shared how math standards work and why we are facing a challenge with modifications given his current level of need.

- The grading system has not matched well with the work we have been doing. I have not been able to give him a grade. He sometimes just doesn't complete any work.
- Mom - it seems like he may need some more support there.
- [TOSA] asked a clarification question--when he has been presented with modified materials or when he is presented something that looks similar - he is still self-selecting to not engage in that work. What is your thought about what more support is? What are you envisioning?
 - Mom - more support to work through things that are hard. Tasks that are achievable. Smaller amount? What can we get him to say yes to?
 - ...
 - Mom - it's important for us that he stays with his peers; it's ok to prioritize peer access and relationships and not focus on math skills.
 - [TOSA] will share with mom all of the work samples and modifications for math

31. On April 25, 2024, the Student's math teacher emailed the school psychologist information to be used in the Student's evaluation. That information stated, in part:

When he is present, he stays in the classroom for about half of the class time doing independent math work. The other half of the time, he takes a break and then works on math with his one-on-one para-educator...in a separate setting.

...

I estimate that [Student] is functioning at about a 2nd grade level in mathematics. He knows how to use a calculator to find answers if the problem is clearly spelled out and he does not have to make decisions about which buttons to push. For example, if the problem is 36×57 , he can plug this into a calculator and get the answer. However, if these numbers are in the context of a word problem where he has to decide if he should be adding, subtracting, multiplying, or dividing, he usually does not know how to proceed. [Student] struggles with number sense which is the foundation for all mathematics.

...

I strongly believe that we are doing a disserve to [Student] by having him in a grade-level math class. The content is so far over his current ability level that he is not getting anything out of it. His time would be much better spent in a small group or one-on-one setting where he could get direct instruction to build his number sense. He is not making progress in the current model.

32. On May 3, 2024, the IEP team held a reevaluation meeting. The Student was found eligible for special education services under the other health impairments category.

May 3, 2024 meeting notes stated, in part:

[Advocate] asked whether the team felt that the team at [the elementary school] had made unfair or unrealistic goal areas and skills addressed that couldn't possibly be followed. [Case manager 2] stated that it is impossible to serve in the general education setting in the goal areas that the Team at [the elementary school] developed.

...

[School psychologist] spoke to the lack of progress that [Student] and general regression towards goals made in this year. [Parent] and [Advocate] spoke to why that may be the case. 'What do you think led to the lack of this progress?' [School psychologist] spoke to a more chaotic environment in the Middle school. More transitions throughout his day, larger

groups of peers, more rigorous academic expectations. [Advocate] suggested that this may be more related to lack of the offering of FAPE.

33. On May 3, 2024, the Parent emailed the District, "I am requesting an independent educational evaluation for our son...at public expense because the evaluation is insufficient."

34. On May 6, 2024, the Parent emailed the District, in part:

I am requesting [Student] and his brother, be transferred...permanently. I have contacted Assistant Director...about all of the procedural and substantive violations that have occurred this school year multiple times, including in writing in February 2024 and April 2023, but there has been no improvement. At [Student's] triennial evaluation meeting last Friday, [Student's] case manager [2], admitted that she and other staff are not providing specially designed instruction pertaining to his IEP goals because she unilaterally made the decision that those goals are inappropriate (in her words: 'horrible'). She also told the team that she and other staff have not completed any IEP progress monitoring this school year...School Psychologist...said [Student] has regressed this school year and he thinks it's due to the school setting. There are many other violations that continue to be ignored and I believe...the school staff will cause further harm to my son.

35. A May 7, 2024 PWN stated, in part:

During evaluation planning, the IEP team discussed evaluation assessment options with [Parent], and team members advocated that norm based, standardized measures in the area of mathematics, reading, and written language provide valuable information, that assists in the development of [IEPs]. The IEP team also discussed the option of undergoing cognitive assessments toward developing a more detailed understanding of the patterns of strength and weakness in [Student's] cognitive abilities.

[Parent] expressed concerned that if [Student] performed poorly on a directly administered standardized measure, the resulting scores will engender internalized bias among those who work with [Student]. Norm based Standardized measures were not employed during this evaluation in the area of academic functioning, and a cognitive assessment was not administered.

36. On May 23, 2024, the Parent filed a complaint with OSPI, alleging the District failed to provide:

- 80 minutes of occupational therapy from September 6, 2023 through October 5, 2023.
- 5,400 minutes of math SDI for the 2023-2024 school year.
- Accommodations and modifications memorialized in his IEP.
- Progress monitoring on IEP goals for the 2023-2024 school year.
- A PWN before changing the Student's placement.

37. On June 14, 2023, the District submitted its response. Regarding the first issue, IEP implementation, the District responded with the following regarding occupational therapy:

The District denies that it failed to materially implement Student's May 2023 IEP...District states that this temporary delay with the indirect OT support identified in Student's May 2023 IEP did not cause any denial of FAPE to Student as reflected in the subsequent OT therapy provided to Student.

Regarding other areas the Parent raised concerns:

The District further acknowledges that Parent had concerns throughout the school year with the implementation of Student's accommodations and modifications that had been in place in elementary school. These concerns were addressed, however, via frequent meetings with Parent and [School] staff and administration...The staff reported at the time and in response to the Request that they were working strenuously to implement all accommodations and modifications for Student.

In a June 21, 2024 email to OSPI, the District stated, in part:

The District denies that the math SDI was not implemented in any material respect...As shown in...the daily notes, the paraeducator was supporting Student in his math class when Student was willing to be in the class or not taking a sensory break. As identified in the written statement from...(Student's general education math teacher)...Student was provided instruction and support in attempting to access the math content in her general education classroom. However, as further noted by [math teacher], the gap between Student's math abilities and grade-level content was significant and required significant modifications. Parent was not willing to have Student access a more accessible math curriculum. In the second semester...(Student's case manager 2), therefore took on more of the role in modifying the math content for Student to access with the paraeducator.

Regarding the second issue, progress reports, the District admitted it failed to provide timely progress reports and proposed the following corrective action:

The District proposes to conduct staff training with the [school] special education teachers and administration regarding the requirements of WAC 392-172A-03090 to provide IEP goal progress reports as specified within the IEP. The District would provide OSPI with its proposed training materials for approval prior to conducting the training and a roster of participants following the training.

Regarding the third issue, PWNs, the District responded:

The District denies that it failed to follow proper procedures for PWN...it has consistently provided Parent PWN regarding the material issues proposed or refused by the District with regard to its provision of FAPE to Student...Even if certain issues may not have been fully addressed in a PWN and/or Parent is dissatisfied with the wording of the District's PWN, the District denies that those issues rose to the level of a significant procedural violation.

38. An undated letter from the Student's math teacher, that appears to have been drafted specifically for the present investigation, stated, in part:

Throughout the first semester, I was creating assignments and assessments that were related to the 6th grade math standards, but more accessible for [Student]. I shortened assignments to only 4 problems when possible and made a special recording sheet that provided adequate space for him to work (¼ of a sheet of paper per problem). I used a larger font size to make the text easier for him to see. The assessments I made for [Student] had fewer questions and less reading than those given to the rest of the class. Since [Student] is a visual learner, I provided links to video lessons and songs related to the content.

[Student] started the class period in the general education setting where he participated in the Attendance Question of the Day. Often, he would then move to a separate setting to

work with his one-on-one paraeducator. The class was moving at a much faster pace and covering more (or deeper) content than [Student] was ready for, so the teaching and conversations that needed to happen between [Student] and the paraeducator were different than those happening with the other students.

I feel it is important to note that I had no prior experience or training related to this level of inclusion. [Student's] level of mathematical skill is around a Kindergarten to 1st grade level in most areas. Typically, students who have an IEP and are more than 2 levels below grade-level are enrolled in our Math Essentials class. We also have an Adapted Academics Program (AAP) that is more individualized for students with greater need. At the beginning of the year, I recommended that we consider placement in AAP for math. However, [Student's] parent did not agree to that.

...

In September, the topic of study in 6th grade math was computation with fractions and decimals. [Student] focused on addition and subtraction of two-digit whole numbers. He was struggling with the concept of regrouping, so he used manipulatives to help with this. In November, the topic of study in 6th grade math was integers and rational numbers. This topic also included graphing in the coordinate plane. [Student] worked on:

- classifying numbers as integers or non-integers
- identifying absolute value & opposites
- placing integers (positive and negative) on the number line
- graphing ordered pairs with integer coordinates on the coordinate plane (all 4 quadrants)

In December and January, the topic of study in 6th grade math was numeric and algebraic expressions. This also included evaluating expressions using the order of operations. [Student] worked on:

- identifying the base and exponent in expressions that had powers.
- using a calculator to evaluate expressions.

His peers were also evaluating expressions, but they were not allowed to use a calculator. During this time I was also trying to evaluate [Student's] ability to solve one- and two-step word problems (i.e. determining the correct operation(s) to use and then correctly solving the problem) since this was one of his IEP goals for math.

In February, the topic of study in 6th grade math was solving equations and inequalities. [Student] focused on writing equations using a variable to represent the unknown quantity. I created special recording sheets for him and made special lesson plans for his one-on-one paraeducator to implement.

During the 2nd semester, [Student's] case manager [2]...took on the role of providing modified math materials at [Student's] level. She used the WA State OSPI Essential Elements for Math as the guide and she provided related worksheets and activities. During this time, the structure of [Student's] math period also changed. He spent the first 20 minutes of the class period in the general education classroom. During that time, he participated in the Attendance Question of the Day and then worked independently on tasks at his level. After 20 minutes, he left the classroom and spent the remainder of the period in the Sensory Room. Part of this time was spent on a movement and brain break and the remainder of the time was spent working on more math, getting instruction from his one-on-one paraeducator.

In March, the topic of study in 6th grade math was Ratios and Proportional Relationships. [Student] worked on identifying ratio relationships when given a set of items (in picture format). For example, when shown a picture of 5 apples and 6 oranges, he was asked to write the ratio of apples to oranges or the ratio of oranges to total pieces of fruit. His peers started at the same level...and then progressed to solving more complicated problems...

In April, the topic of study in 6th grade math was Percent...Since understanding fractions is a prerequisite skill to understanding percentages, [Student] worked on identifying fractional parts of a whole and fractional parts of a set. He was given pictures and asked to shade a fractional part or write the fraction of the shape or set that was already shaded. He also worked on adding and subtracting fractions with like denominators.

In May, the topic of study in 6th grade math was finding the area of parallelograms, triangles, and composite figures. We also spent time reviewing content from the year to help students feel confident on the state testing. [Student] was opted out of state testing. [Student] continued to work on building his number and counting skills (fill in the missing number in a set of numbers, counting on).

39. An undated letter from the Student’s English/Language Arts (ELA) teacher, that appears to have been drafted specifically for the present investigation, stated, in part:

[Student] was in my Humanities block (2 hour) class until November 14, 2024. During that time, I attempted to ascertain [Student’s] abilities, and how to integrate him into the class.

...

During his time with me, I never saw evidence of him reading at all, not one word. He spent our independent reading time looking at YouTube videos, and singing along with them.

40. An undated document stated that the Student’s schedule and SDI took place, as follows:

September 6, 2023–November 13, 2023

Period-Class	Educational Setting	SDI (in minutes per day) ⁴
1-Dance	General	Writing-10
2-Literacy	Special	Writing-20; Reading-30
3-Language Arts	General	Adaptive/SEB
4-World Culture	General	Adaptive/SEB
5-Math	General	Math-30
6-Science	General	SEB-10
Advocacy	Special	Adaptive-20(M/W); SEB-20(T/F)

November 14, 2023–February 1, 2024

Period-Class	Educational Setting	SDI (in minutes per day)
1-Art	General	SEB practice; no SDI
2-Theater	General	SEB practice
3-Math	General	Math-30
4-Science	General	SEB practice-10
5-Literacy	Special	Writing-20; Reading-30
6-Reading	Special	Writing-20; Reading-30
Advocacy	Special	Adaptive-20(M/W); SEB-20(T/F)

⁴ If no number is provided, it is because a number was not provided in the original document.

February 5, 2024–April 15, 2024

Period-Class	Educational Setting	SDI (in minutes per day)
1-STEM	General	Writing-10
2-PE	General	SEB-20
3-Math	General	Math-30
4-Science	General	SEB practice-10
5-Literacy	Special	Writing-20; Reading-30
6-Reading	Special	Writing-20; Reading-30
Advocacy	Special	Adaptive-20(M/W); SEB-20(T/F)

April 15, 2024–Current

Period-Class	Educational Setting	SDI (in minutes per day)
1-Dance	General	Writing-10
2-PE	General	SEB-20
3-Math	General	Math-30
4-Science	General	SEB practice-10
5-Literacy	Special	Writing-20; Reading-30
6-Reading	Special	Writing-20; Reading-30
Advocacy	Special	Adaptive-20(M/W); SEB-20(T/F)

Adaptive/SEB instruction is provided throughout the day, embedded into instructional opportunities by paraeducator and during Advocacy by case manager 1.

41. On June 28, 2024, the Parent submitted a reply to the District’s response. Regarding the first issue, IEP implementation, the Parent stated that the District materially failed to implement the Student’s IEPs, in part, for the following reasons:

Goals

- [O]n November 14, 2023, the District changed the Student from the Read 180 class to the lower-level...reading class...That was done without eliminating the IEP requirement for 150 minutes a week of Read 180 instruction. In fact, it was more than two months later, at the end of January 2024, when the District finally amended the IEP to reflect the dropping of Read 180.
- The District also failed to provide 100 minutes a day of specially designed ‘reading block’ instruction by a general education teacher in the general education setting as required by the June 2023 IEP.
- After November 14, the Student was not in a general education reading class at all...Thus, he could not have received the required 100 minutes a day of specially designed instruction in reading from a general education teacher during the eight weeks between the schedule change and the IEP amendment.
- ...During the first four months of the school year, the District staff worked on Blooket quizzes (creating multiple-choice questions as a classroom game) instead of the reading and writing goals in the IEP.
- During the first four months of the school year case manager 1 was unaware of any specific work done on the math goal, although she was responsible for monitoring all SDI, per the IEP.
- As for the social goal, it was supposed to improve the Student’s ability to communicate within a ‘grade-level group work setting,’ but was only addressed in the remedial System 44 setting with no grade-level peers.

- As further evidence of neglecting the social goal, case manager 2 admitted in a January 2024 IEP goal 'update' that she had not tried to implement the social goal as written... (explaining she did not want to "mess up the social 'flow'" of a work group by providing the Student with sentence strips or graphic organizers, which are part of the goal).

Accommodations

- The District failed to implement the IEP accommodation for daily point sheets from September 6 to 21, from February 27 to April 5, and from May 1 until the school year ended on June 18.
- The District provided communication logs only for the weeks of October 16, October 23, November 6 and November 13...For the rest of the school year the accommodation for weekly check-ins was not implemented.
- The Student's June and January IEPs included, as an accommodation, allowing frequent breaks in the classroom...The IEPs specifically stated 'Location: classroom.'...Nevertheless, throughout the year, the staff allowed the Student to take breaks in the hallway and library and other locations which removed him from the classroom setting with his peers. As evidence of this failure to properly implement the accommodation for breaks in the classroom, the December 14, 2023 Prior Written Notice said the Student was 'often self-selecting to work in the hallway' during his math class...And also other classes.
- The Student's IEPs also included 'variable seating' allowing the Student 'freedom to sit where he feels he can best learn.'...But the Student often was allowed to choose seating in the hallway.
- The Student never received general education math with modifications. This was partly because he frequently sat in the hallway during math class, missing out on general instruction...the case manager [2] wrote that 'the materials assigned in the math class, given to the rest of the students for this math strand, can't be modified down low enough' for the Student and that 'when [Student's] skills are at the level where we can use the materials provided to the rest of his class with direct modifications to those materials, we will do so.'...
- In a March 18, 2024 meeting, the math teacher acknowledged that the Student 'is working at a basic level of ratios, which is different than what the class is doing.'...She explained that, for the most part during the first semester of 2023-24, the Student 'started the class period in the general education setting where he participated in the Attendance Question of the Day' and then moved 'to a separate setting to work with his one-on-one paraeducator.'...
- During the second semester, the case manager 2 began providing modified math materials 'at [Student's] level' using state standards as a guide...The Student continued to participate with math classmates only for 'the Attendance Question of the Day' before separating to do his own work...He would leave class after 20 minutes and spend the rest of the period in the 'Sensory Room.'...
- The June 2023 IEP required access to assistive technology tools for writing such as speech-to-text and Google Suite...He did not receive the AT until December 14. The delay was documented in the December 18 Prior Written Notice, which said the Student and his 1:1 paraeducator 'both have access to Clicker now.'...This was another material failure to implement IEP accommodations.

Regarding the third issue, the Parent's reply stated, in part:

Notice of the decision to drop Read 180 was given to the parents *after* the District had rearranged the Student's entire schedule and began carrying it out. The November 14 notice acknowledged that the change had already occurred *that day* (when school started), before the 2:15 pm meeting with the parents. Thus, notice was not 'a reasonable time before' the proposed date of implementation.

42. From July 3, 2024 emails, the District informed OSPI, as follows:

- Student received SEB SDI from the paraeducator in his science and unified art general education class.
- Advocacy class is a special education class taught by a special education teacher to students across grade levels. The purpose of the class is to provide SEB and/or Adaptive SDI, alongside community building activities, class meetings, enrichment activities, and the opportunity for academic support, as needed.

CONCLUSIONS

Issue 1: IEP Implementation – In the Parent's complaint and reply to the District's response, the Parent has alleged the District failed to:

- Provide 80 minutes of OT services from September 6, 2023 through October 5, 2023.
- Provide 5,400 minutes of math SDI for the 2023-2024 school year.
- Provide reading 180 SDI from September 6, 2023 until January 29, 2024.
- Provide reading and writing SDI in a general education setting from September 6, 2023 until January 29, 2024.
- Provide social/emotional SDI in general education with grade-level peers.
- Educate the Student in his least restrictive environment.
- Provide accommodations and modifications memorialized in Student's IEP.

The District responded:

- Its temporary delay with the indirect OT support identified in the Student's May 2023 IEP did not cause any denial of FAPE to the Student.
- That staff worked strenuously to implement all accommodations and modifications.
- It denied that math SDI was not implemented in any material respect.

The District stated in its response that IEP-A, which was created in May 2023, was being implemented during the 2023–24 school year. However, in June 2023, IEP-A was amended to create IEP-B and the IEP was sent to the Parent by the District in August 2023. This establishes that IEP-B was the IEP that was supposed to be implemented and was the IEP the Parent believed was being implemented. Therefore, OSPI bases the conclusion on IEP-B.

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

In making this decision, OSPI will review whether the SDI was implemented in the correct setting (LRE), and what data and details are in the record about the SDI provided.

Reading 180 SDI: According to IEP-B, the Student was entitled to receive 150 minutes per week of the Reading 180 program from a special education teacher in a special education setting. A December 20, 2023 email from case manager 1, who was the Student's special education teacher, stated, in part, "We are working on retell through our Blooket project in class, but that doesn't give a specific measurement toward this goal." The Blooket program is different than the Read 180 program that is mentioned in IEP-B's matrix and goal, and thus the Blooket reading program does not satisfy the type of reading instruction required based on IEP-B. Additionally, the District has not provided any evidence that the Student received any SDI using the Reading 180 program. Thus, while the Student may have been receiving some specially designed instruction in reading, OSPI finds that the District materially failed to implement the Student's Reading 180 SDI minutes, from September 6, 2023 until January 29, 2024.⁵ As a corrective action, OSPI will order compensatory education in reading.

Reading Block SDI, Writing SDI, and LRE: According to IEP-B, the Student was entitled to receive 100 minutes per day of reading block SDI provided by a general education teacher, and 150 minutes per week of written language SDI provided by a paraeducator to be provided in a general education setting.

An undated letter from the Student's English/Language Arts teacher that appears to have been drafted specifically for the present case stated, in part, "[Student] was in my Humanities block (2 hour) class until November 14, 2024...During his time with me, I never saw evidence of him reading at all, not one word. He spent our independent reading time looking at YouTube videos, and singing along with them. Then, on November 15, 2023, a new schedule moved the Student from his Humanities block to System 44, which is a special education class in which the Student received reading and writing SDI."

Based on the present case's record, OSPI finds that the District materially failed to implement the Student's reading block and writing SDI minutes between September 6, 2023 and January 29, 2024, for two reasons. First, the English/ Language Arts teacher's letter establishes that the Student did not receive his block reading and writing SDI between September 6, 2023 and November 14, 2023. Second, from November 15, 2023 until January 29, 2024, the Student received his reading and writing SDI in a special education setting instead of a general education setting as required by IEP-B.⁶ As a corrective action, OSPI will order compensatory education in writing in addition to the compensatory education in reading ordered above.

Math SDI: According to IEP-B and the January 29, 2024 IEP amendment, the Student was entitled to receive 150 minutes per week of math SDI provided by a paraeducator in a general education setting. The Student's math goal in both IEPs reference working on two-step word problems.

⁵ The January 29, 2024 IEP amendment did not mention the Reading 180 program.

⁶ After January 29, 2024, when the Student's IEP was amended, the Student's reading and writing SDI was provided in the correct setting.

According to the undated document about the Student's schedule, the Student received 150 minutes of math SDI per week, but other documents in the case record do not definitively establish this. While the Student received some SDI in math, it is likely he did not receive 150 minutes per week, nor was the SDI focused on addressing the Student's goals.

For example, during the 2023–24 school year, the first reference to math SDI in the present case's record occurs in a December 20, 2023 message from case manager 1, emailed to the Parent that stated, in part, "I'm working with [math teacher] on getting specific data on this goal (math)...I know that [Student] works on word problems, but I haven't had a chance to see it for myself and I don't want to speak to that which I don't know." Then in a January 31, 2024 email from the math teacher to the Parent, the math teacher wrote:

My number one goal after Winter Break was to have [Student] complete some two-step problem solving tasks so that I could gauge his present levels...

I was also asking [Student] to work on some problem solving in IXL. I wanted him to work on code SRL which was Two-Step Mixed Operation Word Problems, a 3rd grade skill. When I look at his history of IXL use, it shows that he did not complete any problems in that skill. The only thing he did in IXL during January was two very easy Pre-Kindergarten skills: 'Long and Short' and 'Compare Size, Weight, and Capacity'.

Since I wasn't seeing any work with two-step problem solving, I decided to give him some one-step word problems...

So that led into [Student's] most recent work where he has been working on writing algebraic equations to match addition and subtraction problems that are modeled using manipulatives. When he returns (tomorrow or next week) he will be writing algebraic equations from one-step word problems (addition and subtraction only) and then solving for the unknown amount. The next step will be to write algebraic equations that use multiplication and division.

Then on April 25, 2024, the math teacher emailed the school psychologist information to be used in the Student's evaluation, which did not reference the Student's math goals at all. Finally, in the math teacher's undated letter, the math teacher thoroughly explains on a month-by-month basis what the Student did in math during the 2023–24 school year. This letter states, in part, "In December and January...I was also trying to evaluate [Student's] ability to solve one- and two-step word problems (i.e. determining the correct operation(s) to use and then correctly solving the problem) since this was one of his IEP goals for math."

This comment is consistent with the math teacher's January 31, 2024 letter to the Parent and these documents seem to imply that the math teacher did not assess the Student concerning his specific IEP goals until at least December 2023; more than three months after the school year began. Also, aside from the comment just above, the rest of the math teacher's letter does not refer to working on the Student's specific math goals for the rest of the year, and progress notes provide no insight as to whether the District worked on the Student's math SDI on a regular basis. As such, while OSPI finds that the Student did receive some amount of SDI math, OSPI finds that the District did not provide 100% of the SDI in math, and did not seem to spend much time working on the Student's IEP goals in math, or, if the math goals were not appropriate for the Student, amending

those goals and providing the appropriate instruction. Thus, the District materially failed to provide the Student his math SDI during the 2023–24 school year and will order compensatory education in math as a corrective action.

Social/Emotional and Behavioral SDI: According to IEP-B and the January 29, 2024 IEP amendment, the Student was entitled to receive 150 minutes per week of social/emotional and behavioral SDI provided by a paraeducator in a general education setting. A January 25, 2024, document entitled “[Student] IEP goals” stated, in part:

This has been the hardest goal (social/emotional) to measure since we have not yet had extensive success with engaging [Student] in group work as he is very adult-focused. So, when we do get that social ball rolling in a working group, I am always hesitant to intervene and insert sentence strips and/or graphic organizers into the situation, worrying that I might mess up the social ‘flow’. That said, without those supports, [Student] still manages to contribute to working groups that he chooses to work with, especially when he can make connections between the subject matter and his favorite interests.

In the undated document about the Student’s schedule, it shows the Student received SEB SDI in general education classes as follows:

- September 6–November 13, 2023, in Language Arts, World Culture, and Science.
- November 14, 2023–February 1, 2024, in Art, Theater and Science.
- February 1–April 15 2024, in PE and Science.
- After April 15, 2024 in PE and Science.

Despite this information, it is not clear from the document that the Student worked on his SEB goals, or exactly to what type of SEB SDI worked on. For example, reminding the Student to make good choices, which is a type of SEB SDI, is different than the type of SDI that the Student should have been working on to address his SEB goal. Furthermore, OSPI was not provided with progress notes about the Student’s SEB SDI that may have provided details and data on the Student’s SEB goals. As such, OSPI finds that the District materially failed to implement the Student’s SEB SBI during the 2023–24 school year and will order SEB compensatory education as a corrective action.

OT Services: Regarding the OT services allegation, the District concedes that it did not provide these services in September 2023, but the OT’s log also shows that in March 2024, the Student received 120 minutes of OT services, and in May 2024, the Student received 130 minutes of OT services. These additional 90 minutes more than made up for the services missed during September 2023, and as such, the record shows that during the 2023–24 school year, the Student has received the minutes in OT services as stated in his IEP. Thus, the District did not materially fail to provide the Student’s OT services.

Accommodations and Modifications: Finally, it appears that some of the accommodations and modifications, such as modification of the Student’s math work in his general education class, were implemented. Although the Parent may not have been satisfied with how the Student’s math work was being modified, the record shows that in multiple emails beginning in October that there are references to the modifying of the Student’s general education math work. This is also supported by the math teacher’s detailed letter. On the other hand, other accommodations and modifications were not implemented, implemented late, or implemented inconsistently. For

example, an October 11, 2023 PWN states that the communication log was not being fully utilized. Additionally, the record also shows that the Student spent a lot of time taking breaks in the hallway, despite the IEP stating that those breaks should have taken place in the classroom. OSPI would like to remind the District that the District needs to implement accommodations and modifications as they are stated in the IEP.

For the reasons provided above, OSPI finds a violation as to the present case's first issue. The District will provide the Student compensatory education and will hold an IEP meeting to discuss how the Student's IEP will be implemented. Regarding compensatory education, OSPI notes that the investigation showed the Student did receive some SDI in the areas on his IEP; however, the Student did not receive all of the SDI outlined in his IEP, thus OSPI found a material failure to implement the IEP. Given the Student received some SDI, OSPI orders the amount of compensatory education detailed below.

Issue 2: Progress Notes – In the present case, the Parent filed a complaint, alleging the District failed to provide Parent progress monitoring on IEP goals for the 2023–24 school year. The District admits that it failed to provide the Parent IEP goal progress reports in a timely manner and proposed as a corrective action to conduct staff training with the school's special education teachers and administration regarding the requirements of WAC 392-172A-03090 to provide IEP goal progress reports as specified within the IEP. Based on the District's concession, OSPI finds a violation as to the second issue and accepts District's proposal of training as a corrective action.

Issue 3: Prior Written Notices (PWNs) – In the present case, the Parent filed a complaint, alleging the District failed to provide the Parent PWN before changing the Student's placement. The District responded that it has consistently provided the Parent PWN regarding the material issues proposed or refused by the District with regard to its provision of FAPE to the Student.

A PWN must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

Regarding the third issue, the Parent's reply stated, in part:

Notice of the decision to drop Read 180 was given to the parents *after* the District had rearranged the Student's entire schedule and began carrying it out. The November 14 notice acknowledged that the change had already occurred *that day* (when school started), before the 2:15 pm meeting with the parents. Thus, notice was not 'a reasonable time before' the proposed date of implementation.

The Parent's position is supported by a November 15, 2023 PWN, which stated, in part, "On the same day as this meeting [Student] started a new schedule for the quarter (Art, Theater, Math, Science, System 44 reading block, Advocacy)." Normally, just a schedule change would not necessarily need a PWN. However, because this schedule change did impact the receipt of the Student's reading SDI, it was a change related to the provision of FAPE and would need to be reflected in a PWN. Additionally, although the District provided the November 15, 2023 PWN, the

PWN was not provided in a reasonable amount of time before the change it was proposing. As such, OSPI finds a violation as to the third issue and as a corrective action, the District will provide written guidance to its special education staff regarding the need to provide PWNs in a timely manner before the actions in PWNs need to be implemented.

CORRECTIVE ACTIONS

By or before **August 15, 2024, September 27, 2024, February 7, 2025, and June 20, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education⁷

By or before **September 13, 2024**, the District will meet with the Parents to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Reading: 960 minutes
- Written Language: 480 minutes
- Math: 960 minutes
- Social/Emotional and Behavioral: 480 minutes

Unless otherwise agreed to by the District and Parents, 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 designed instruction in the Student's areas of service. By or before **September 27, 2024**, the District will provide OSPI with documentation of the schedule for services.

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. By or before **June 6, 2025**, the compensatory education must be completed.

By or before **February 7, 2025**, the District will update OSPI on the compensatory education it has provided to date. By or before **June 20, 2025**, the District will provide documentation to OSPI that it has completed the compensatory education.

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

⁷ Compensatory education is an equitable remedy that does not need to be awarded on a one-to-one ratio with the missed educational time because it is often provided on a one-to-one basis instead of a classroom setting that may have multiple students.

round trip mileage at the District's privately-owned vehicle rate. By or before **June 20, 2025**, the District must provide OSPI with documentation of compliance with this requirement.

IEP Meeting

By or before **September 13, 2024**, the Student's IEP team will meet. At the meeting or meetings, the IEP team will:

- Draft IEP goals aligned to current performance data.
- Consider whether and how SDI can be provided in general education.⁸

By or before **September 27, 2024**, the District will provide OSPI documentation of the parties' decisions, including a copy of the IEP and prior written notice.

DISTRICT SPECIFIC:

Written Guidance

By **September 13, 2024**, the District will ensure that the following individuals receive written guidance on the topic listed below: special education administrator, principal, the assistant principal, and special education staff (special education teachers, school psychologist, case managers, SLP, OT), at the school that the Student is enrolled in this school year. The guidance will address when PWN must be provided to parents, and the content requirements of a PWN.

By **August 15, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 22, 2024.

By **September 27, 2024**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 17th day of July, 2024

Alyssa Fairbanks
Assistant Director for Dispute Resolution
Special Education
PO BOX 47200
Olympia, WA 98504-7200

⁸ If the Student is still attending a school within the District.

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.)