

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-28

PROCEDURAL HISTORY

On March 3, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the North Thurston 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 March 6, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 20, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on March 22, 2023. OSPI invited the Parent to reply.

On April 3, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on April 4, 2023.

On April 17 and 18, 2023, OSPI requested the District provide additional information. The District provided information on April 18, 24, and 27, 2023. OSPI forwarded the information to the Parent on April 26 and 27, 2023.

On April 18, 2023, OSPI's investigator conducted an interview of the special education director.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began with the 2022-2023 school year per the issues alleged in the complaint. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. During the 2022–2023 school year, did the District follow proper procedures for implementing the following portions of the Student's individualized education program (IEP): toileting assistance, speech services, and occupational therapy?
2. From February 13–17, 2023, did the District follow proper procedures for implementing the following portion of the Student's IEP: 1:1 paraeducator support?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 [child 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 citizen 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. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

FINDINGS OF FACT

2021-2022 School Year

1. The Student's IEP team developed a new IEP for the Student on May 11, 2022. It read, in part:

Student requires direct support with toileting, schedules and reminders. [sic] He currently requires toileting support the minimum average of three times weekly. Student requires removal of garments, removal of soiled underwear, direct care with cleaning feces and urine. In addition, student requires work with storage and disposal of soiled garments. Currently, student receives toileting support in the bathroom of the classroom [which] is designed to provide intensive support and instruction in social emotional learning. (Not the health room this support is provided by the dedicated 1:1 paraeducator. [sic]) Incidents are recorded on his daily point sheet. See attached document from current position.¹

The May 2022 IEP included, in part, the following annual goals:

- **Speech 1:** ability to produce phonemes /k, g, f, and v/ in all word positions, increasing from ability to produce said phonemes “in sentences with a model with 88% accuracy” to ability to produce said phonemes “in all word positions in conversation with 80% accuracy;”
- **Speech 2:** ability to pronounce /l/ in all word positions, increasing from ability to produce said phoneme “with a model with 70% accuracy to produce /l/ in all word positions and blends in sentences with 80% accuracy;”
- **Speech 3:** ability to increase “overall speech intelligibility” in “naturalistic conversation”, increasing from 70% intelligible to 80% intelligible;
- **Fine Motor 1:** ability to increase scissor usage, increasing “from being able to cut within ¼ an inch of a line to being able to cut out shapes within 1/8 an inch of a line with 80% accuracy”; and,
- **Fine Motor 2:** ability to copy letters and numbers, increasing from “50% correct sequence and line orientation to being able to write 80% of upper and lower case letters and numbers with correct sequence and line orientation.”

The May 2022 IEP provided the Student, in part, with the following accommodation: paraeducator support with toileting – daily in all settings.

The May 2022 IEP provided the Student with the following non-concurrent specially designed instruction in a *special education setting* through May 12, 2023:

- Speech: 30 minutes a week (to be provided by a speech language pathologist (SLP))
- Fine Motor: 30 minutes a week (to be provided by an occupational therapist (OT))
- Math: 150 minutes a week (to be provided by a special education teacher)
- Reading: 150 minutes a week (to be provided by a special education teacher)
- Written Language: 100 minutes a week (to be provided by a special education teacher)
- Social Skills: 75 minutes a week (to be provided by a special education teacher)

The May 2022 IEP provided the Student with the following non-concurrent specially designed instruction in a *general education setting* through May 12, 2023: social skills: 250 minutes a week (to be provided by a special education teacher).

¹ The attached document was a letter was dated April 1, 2022 and read, in part: “Student is a patient in my pediatric practice who has been diagnosed with autism. He requires support for toileting (reminders and assistance) and would benefit from having continued assistance with this.”

The May 2022 IEP provided the Student with the following supplementary aids and services through May 12, 2023:

- Individual Paraeducator Support: 243 minutes 5 times a week (*general education setting*)
- Individual Paraeducator Support: 117 minutes 5 times a week (*special education setting*)

2022-2023 School Year

2. At the start of the 2022-2023 school year, the Student was eligible for special education services under the category of developmental delay, was in the second grade, attended a District elementary school, and his May 2022 IEP individualized education program (IEP) was in effect.
3. The District's 2022-2023 school year began on September 7, 2022.
4. According to attendance data on Skyward, the Student had two excused absences during the 2022-2023 school year.
5. According to the Parent, for "approximately the first two weeks of school, student did not receive any help with toileting even though it is in his IEP."
6. The District's response included "daily data charts" that tracked the Student's ability be engaged, be safe, and be kind.

According to the daily data charts, on September 9, 2022, the Student had a toileting accident.

In relation to toileting, the District's response read, in part:

Staff reported in an interview that the Student can toilet independently often and that he always has adult support for toileting...When accidents occur, Student receives assistance in the nurse's office...The occurrence of accidents is not an indicator that Student is not receiving 1:1 support or that the toileting supports in his IEP are not being implemented.

7. On September 14, 2022, the Parent emailed District staff, stating the Student had had a toileting accident during recess that day. The Parent's email included, in part, the following directive: "Student may want to wipe himself, but he needs the assistance...Student needs to sit on the toilet for up to 5 minutes."

The daily data charts entry for September 14, 2022 read, in part: "Accident at 10:30. I asked if Student had to go at 10:05 and Student said no. Second accident at 1:00."

8. On September 15, 2022, the case manager responded to the Parent's September 14, 2022 email, stating, in part:
I realize now that we may have had some gaps in understanding on what exactly student's toileting assistance plan would be going into this school year. I have fully briefed the paraeducator this morning in regard to student's toileting assistance needs and what is outlined in his IEP. I feel we have a solid plan moving forward. Until we determine what toileting schedule will work best for student I have asked the paraeducator to remind the

student to try and go to the bathroom during transitions and at the very least every 30 to 45 minutes, and before any recesses.

...

I've asked the paraeducator to have student change in the nurse's office where the paraeducator can assist with wiping when needed...My hope is that by reminding student frequently we may be able to get an idea of how often student needs to go and get him on a schedule that lessens the time he would need to be out of the classroom.

9. According to the daily data charts, on September 15, 2022, staff assisted the Student with five bathroom breaks.
10. According to the daily data charts, on September 19, 2022, District staff assisted the Student with five bathroom breaks.
11. According to the daily data charts, on September 20, 2022, the Student had two toileting accidents and District staff assisted the Student with four bathroom breaks.
12. According to the daily data charts, between September 21 and 29, 2022: the Student was provided with multiple bathroom breaks on six days; and, on two days, the Student had a toileting accident.
13. In its response, the District stated: "The Student received occupational therapy and speech language therapy...starting on September 23, 2022."
14. The District's response included a 'Speech/Language Therapy' log and an 'Occupational Therapy' log. Said provider logs appears to have been created on or about March 8, 2023, and represent an accounting of services provided to the Student during the 2022-2023 school year. A copy of said log is attached as **Exhibit 1**.
15. The District's response included notes (investigatory notes) from its investigation of the issues identified in this community complaint. Those notes read, in part: "When asked, the SLP confirmed that services for occupational therapy and physical therapy did not begin for the Student until 12 days after services began."
16. On September 26, 2022, the SLP emailed the Parent, stating she wanted "to try Student in a small group for 30 min/1 time per week as opposed to the two 15 min times."

The Parent responded, stating, in part:

I am hesitant in a group setting right off the bat, as Student has a lot of articulation with certain letter sounds to work on, but maybe having a few peers who can help model the correct way would help. I just want to make sure Student is receiving the most time of working on his speech as indicated [on his IEP].

Later that day, the SLP emailed the Parent, stating the OT and SLP had jointly provided services during a small group setting that day. The SLP further stated: "I would like to try it at least a few more times before we make any permanent decision."

17. According to the daily data charts, in October 2022: the Student was provided with multiple bathroom breaks on approximately 20 days; and, the Student had 11 toileting accidents.
18. According to the Parent, in mid-October 2022, the Parent became aware the District was "cutting IEP minutes by trying to combine speech and occupational therapy [service times, even though they were supposed to be non-concurrent services]."

According to emails, in mid-to-late October 2022, the Parent and District staff discussed holding a meeting "to discuss ideas for service delivery for the areas of speech and OT."

19. An October 14, 2022 email from the OT to the Parent read, in part:

Student has been doing amazing so far this year with occupational therapy. I dropped by one of his speech sessions to check in and it turned out to work really well. The speech language pathologist and I determined the small group student was a part of that well. We have been trying out the addition of occupational therapy to the group thereby combining the services which reduces the teacher-student ratio and increases focus to the task. Additionally, this reduces the amount of times student is pulled from class. His speech and occupational therapy goals can be targeted nicely together in this group.

In response, on October 17, 2022, the Parent asked whether the Student was receiving the appropriate number of weekly minutes in speech language pathology and occupational therapy.

20. In an email thread dated October 18 – 20, 2022, the Parent and the SLP scheduled "an informal conversation to discuss ideas for service delivery for the areas of speech and occupational therapy."
21. The Parent met with District staff on October 25, 2022 – to discuss the provision of speech and occupational therapy.

Based on emails and a subsequent prior written notice (dated October 29, 2022), on October 25, 2022, the group determined: Student would continue to receive 30 minutes of speech language pathology and 30 minutes of occupational therapy each week – non-concurrently; 15 minutes of speech language pathology would be provided during a 30 minute small group setting; 15 minutes of occupational therapy would be provided during a 30 minute small group setting; 15 minutes of speech language pathology would be provided in a 1:1 setting; and, 15 minutes of occupational therapy would be provided in a 1:1 setting.

The District's response read, in part: "Because the District received Parent's written agreement to this amendment, no IEP team meeting to amend the IEP was necessary, per WAC 392-172A-03110(c). The prior written notice documents that the team considered and rejected the option of concurrent services."

22. According to the District:

During some of [the] time period [of late September 2022 through October 2022], the staff working with Student trialed delivery of the speech and [occupational therapy] services in Student's IEP in a small group setting. This trial was consistent with the services in Student's IEP, which does not specify whether these minutes of service will be delivered 1:1 or with a small group. The staff found that Student stayed focused when receiving services with peers in a small group and benefited from peer models.

In the course of this trial, staff also discovered that delivering speech and [occupational therapy] services concurrently appeared to increase student focus and reduced time away from the classroom for pull-out services.

23. According to the daily data charts, in November 2022: the Student was provided with multiple bathroom breaks on approximately 18 days; and, the Student had 3 toileting accidents.
24. The District's response includes progress reporting related to the May 2022 IEP, dated November 11, 2022. Said reporting showed, in part, the following progress:
 - **Speech 1:** sufficient progress;
 - **Speech 2:** sufficient progress;
 - **Speech 3:** sufficient progress;
 - **Fine Motor 1:** sufficient progress; and,
 - **Fine Motor 2:** sufficient progress.²
25. On November 16, 2022, the SLP emailed the Parent, reporting the Student was making progress and "work[ing] very hard" during the SLP sessions.
26. A mid-November 2022 email from the OT to the Parent referenced the OT having worked with the Student on two recent occasions – one of which was "1:1 OT time."
27. According to the daily data charts, in December 2022: the Student was provided with multiple bathroom breaks on approximately 9 days; and, the Student had 6 toileting accidents. (On several additional days, the Student was provided with at least one bathroom break.)
28. According to the daily data charts, in January 2023: the Student was provided with multiple bathroom breaks on approximately 19 days; and, the Student had 10 toileting accidents.
29. The District's response includes progress reporting related to the May 2022 IEP dated early February 2022. The progress reporting noted sufficient progress for the annual goals in the following areas: social skills, math, reading, speech; and noted the Student had made insufficient progress on Student's written language goal.
30. According to the daily data charts, in February 2023: the Student was provided with multiple bathroom breaks on approximately 20 days; and, the Student had 3 toileting accidents.

² Other progress entries were: social skills (emerging skill); math (sufficient progress); reading (sufficient progress); and written language (emerging skill).

31. According to the Parent:

The District has a copy of Student's daily log that states Student had no paraeducator for several days during the week of February 13, 2023 through February 17, 2023. [During this time period], the general education teacher had to fill in as Student's paraeducator and be the in-class [general education] teacher at the same time.

According to the District:

[In preparation of its response], the principal, the case manager, the classroom teacher, the SLP, and the OT were interviewed. They report that during the week of February 13th – 17th, 2023, the Students' usual support paraeducator was out sick...They reported that the student had 1:1 adult support, from different staff members, for each of the days in question, apart from Friday the 17th when the student was absent.³ Although 1:1 support was not provided by the same adult throughout the school day, Student was provided with 1:1 adult support for 360 minutes per day as required by his IEP.

32. The February 14 and 15, 2023 daily data chart entries noted the paraeducator as being absent.

33. An email from the Parent dated mid-February noted the Student's paraeducator was absent February 14 and 15, 2023. And the case manager's responsive email stated the Student's paraeducator would be absent that week. The case manager's responsive email further read:

[The Student's paraeducator] has been out this week due to illness...Student has been provided support by other paraeducators throughout the day to meet his IEP minutes. I spoke with his teacher and we have coordinated coverage for him throughout the day so that he is supported. The substitute paraeducator is out again today and we will cover this vacancy with the paraeducators we have available.

I assure you that student's IEP minutes are being met. Student was still attending small group in getting all of his...instruction with support. He has been taking his breaks within my classroom as usual and we are making sure that he is getting any and all the assistance that he needs provided by the paraeducators that we have available.

In response, the Parent said it was "disheartening and frustrating" to receive "conflicting information," as the Student had related that he "did not have paraeducator classroom support." And the Parent expressed a concern that the Student's "teacher [was the one purportedly] providing the general education classroom paraeducator support" – as the general education teacher would have other responsibilities.

34. The Parent's reply read, in part:

On February 15, 2023, we were notified by the homeroom teacher...that she [had again served as] Student's 1:1 support in the general education classroom for the entire day [but] the homeroom teacher would not be considered his 1:1 paraeducator for those two days as she cannot teach the entire class and [also] provide direct 1:1 support for Student.

³ The District's response included a February 17, 2023 email from the Parent that read, in part: "I wanted to let you know that Student will not be at school today (we have family in town)."

35. Progress reporting dated early March 2023 showed Student made sufficient progress on the fine motor goal related to tool usage. (The early March 2023 progress data did not include information on Student's progress on the fine motor goal related to visual motor skills.)

36. According to the Parent, on March 2, 2023:

Student informed us that he had a toileting accident at school earlier in the day, and that he had to clean himself up and that his 1:1 paraeducator was told she could no longer help Student with toileting. Direct high support with toileting is directly stated in Student's IEP.

37. On March 2, 2023, the Parent emailed the principal, stating, in part:

Student...had a toileting accident at school today and it seemed that he did not get wiped up very well. Student informed me that he had to wipe himself up in the help room and that is paraeducator was instructed not to help them. Student said that he was told that is paraeducator...cannot both clean him up anymore. I'm not sure how long this has been going on for, but it specifically states his IEP...That he needs direct support with all toileting issues.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District did not follow proper procedures for implementing the following portions of the Student's individualized education program (IEP) during the 2022-2023 school year: toileting assistance, speech services, and occupational therapy.

A 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 child with a disability and those required by the IEP.

Toileting Assistance

The May 2022 IEP noted the Student required assistance with all stages of the toileting process. It also noted the Student required the following accommodation: "paraeducator support with toileting – daily in all settings."

Here, the documentation did show the Student experienced toileting accidents on a regular basis throughout the 2022-2023 school year. This appears to have occurred, in part, for three reasons: as detailed in the September 14 and 15, 2022 emails, it was not until mid-September 2022 that the Student's paraeducator was informed of the exact toileting needs of the Student; no less than 4 individuals served as the Student's 1:1 paraeducator throughout the 2022-2023 school year; and, the Student did have some independent adaptive ability in the toileting process.

Importantly, though, the fact the Student experienced regular toileting accidents throughout the school year does not, in and of itself, mean the Student was not provided with toileting services. For example, the daily data charts showed: between September 2022 and February 2023, the Student was regularly provided with multiple bathroom breaks per day. Accordingly, OSPI does

not find a material failure to implement this portion of the Student's IEP. But OSPI does recommend the IEP team meet to determine: the Student's exact toileting needs; and, whether the toileting assistance plan (as understood by the Parent and District staff), needs to be revised.

Speech and Occupational Therapy

The May 2022 IEP provided the Student with 30 minutes a week of speech therapy and 30 minutes a week of occupational therapy – to be provided in a nonconcurrent manner.

In relation to implementation of the same, this investigation showed two periods during which the Student was not provided with the foregoing services:

For approximately 2.5 weeks – from the start of the school year on September 7, 2022 through February 23, 2023, the Student was not provided with any speech and occupational therapy services. Accordingly, during this time, the Student missed a total of 75 minutes of speech therapy and 75 minutes of occupational therapy.

For approximately 4 weeks – from September 26, 2022 through October 25, 2022, the Student was provided with 15 minutes a week of speech therapy and 15 minutes a week of occupational therapy. (During this time, the Student received speech and occupational therapy services during a 30-minute small group.) Accordingly, during this time, the Student missed a total of 60 minutes of speech therapy and 60 minutes of occupational therapy.

In total then, during the 2022-2023 school year, the Student missed a total of 135 minutes of speech therapy and 135 minutes of occupational therapy. This represents a material implementation failure, and a violation of the IDEA. Some compensatory education is warranted.

Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. Here, as compensatory education, the District will be required to provide the Student with the services missed: 135 minutes of speech therapy and 135 minutes of occupational therapy – to be provided in a nonconcurrent manner.

Additionally, this investigation revealed an IEP development violation: individual staff members cannot unilaterally make substantive changes to a student's IEP. Here, on or about September 26, 2022, the SLP effectively reduced the Student's service times in both speech and occupational therapy by approximately 15 minutes a week. Generally, if a student's IEP needs to be revised: that change should be made following communication between the IEP team members, including the Parent; the change should be based on relevant, sufficient data on the student's needs resulting from the student's disability; the IEP itself should be amended to reflect the change – so all service providers are aware of what needs to be provided to the student; and, prior to the change taking effect, the parent should be provided a prior written notice outlining the nature of the change, why it was made, and when it will take effect. Accordingly, the District will be required to disseminate written guidance to certain staff members.

Issue 2: IEP Implementation– The Parent alleged the District did not follow proper procedures for implementing 1:1 paraeducator support between February 13 and 17, 2023.

The May 2022 IEP provided the Student with the following “individual paraeducator support”: 243 minutes 5 times a week in a *general education setting*; and, 117 minutes a week in a *special education setting*.

In relation to the provision of 1:1 paraeducator to the Student from February 13-17, 2023, this investigation showed, in part:

- On February 15, 2023 email, the Parent reported the Student had said he did not have 1:1 paraeducator support during the week of February 13, 2023. In a responsive email, the case manager confirmed that the individual who normally served as the Student’s 1:1 paraeducator was absent that week – but asserted that “Student [was] provided support by other paraeducators throughout the day to meet his IEP minutes”⁴;
- During OSPI’s interview with the special education director on April 18, 2023, the District clarified that neither the principal, case manager, or teacher stepped in to serve as the Student’s 1:1 paraeducator during the time period in question, but rather, floating paraeducators or 1:1 paraeducators assigned to other students that happened to have breaks in their schedule, stepped in to serve as the Student’s 1:1 paraeducator; and,
- As a follow-up to the interview with OSPI’s investigator, the director provided OSPI with the name of two individuals that served, on occasion, as the Student’s 1:1 paraeducator during the week of February 13-17, 2023: substitute 1; and, substitute 2. According to the director, substitute 1 “checked on the Student 2-3 times each day”, and substitute 2 “worked with Student on Monday, February 13, 2023 for the entire day, but...she was absent the rest of the week.”

On the basis of the foregoing information, OSPI determines: the Student was provided with some 1:1 paraeducator services during the week of February 13, 2023; but the Student likely did not receive 1:1 paraeducator for the entire time the Student was in school the week of February 13, 2023, as was required by the May 2022 IEP. This conclusion, though, does not mean there was a material failure to implement the May 2022 IEP. Again, a material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP. Here, the Student did receive some 1:1 paraeducator services during the week in question, and this investigation did not show – and no allegation was made – that the Student was not provided 1:1 paraeducator services during the many other weeks of the school year. Still, OSPI recommends the District revisit its procedures for identifying available substitute paraeducators when regularly-scheduled paraeducators will be absent.

The foregoing conclusion is further buttressed by the fact that the failure to provide fulltime 1:1 paraeducator services during the week of February 13, 2023 did not appear to impact the Student’s ability to access FAPE. For example, according to progress reporting dated April 14, 2023, except for the written expression goal, the Student made either sufficient progress or mastered all his IEP goals. In sum, OSPI does not find an IDEA violation.

⁴ A similar assertion was made in the District’s response: “The Student had 1:1 adult support, from different staff members, for each of the days in question.”

CORRECTIVE ACTIONS

By or before **May 12 and 19, 2023**, and **June 2, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **May 12, 2023**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 135 minutes of speech therapy; and, 135 minutes of occupational therapy. The foregoing services will be provided non-concurrently, unless the Parent and respective service providers agree to provide them concurrently.

The District will provide OSPI with documentation of the schedule for services by or before **May 12, 2023**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than June 2, 2023, including those needing to be rescheduled.*

No later than **June 2, 2023**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse 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 2, 2023**

DISTRICT SPECIFIC:

Dissemination of Written Guidance

By **May 19, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal,

and special education-certified staff, including educational staff associates (ESAs)⁵, at the school that the Student was enrolled in during the 2022-2023 school year. The guidance will include examples.

1. IEP development (WAC 392-172A-3110);
2. Parent participation (WAC 392-172A-03100); and,
3. Prior written notice (WAC 392-172A-05010).

By **May 12, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by May 17, 2023.

By **May 19, 2023**, 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.

RECOMMENDATIONS

OSPI recommends the IEP team meet to determine: the Student's exact toileting needs; and, whether the toileting assistance plan (as understood by the Parent and District staff), needs to be revised.

OSPI recommends the District revisit its procedures for identifying available substitute paraeducators when regularly-scheduled paraeducators will be absent.

Dated this 28th day of April, 2023.

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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

⁵ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)